No. 12097

United States

Court of Appeals

for the Ninth Circuit

R. E. SHELDON, as Executive Director, Unemployment Compensation Commission of Alaska, ERNEST F. JESSEN, ANTHONY ZORICH and GEORGE VAARA as the Unemployment Compensation Commission of Alaska, UNITED SMELTING, REFINING AND MINING COMPANY, a corporation, ALASKA LAUNDRY, INC., a corporation, PACIFIC AMERICAN FISHERIES, INC., a corporation, HEALY RIVER COAL CORPORATION, a corporation, JUNEAU SPRUCE CORPORATION, a corporation, WESTERN FISHERIES COMPANY, a corporation, WELLS ALASKA MOTORS, a co-partnership, and JOE COBLE, doing business as The Pioneer Cab Company, and all others similarly situated,

Appellants,

vs.

FELTON H. GRIFFIN,

Appellee.

Transcript of Record

Appeal from the District Court for the Territory of Alaska,
Third Division

Typo Press, 398 Pacific, San Francisco 12-3-48—60

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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J. GERALD WILLIAMS,
Attorney at Law, Anchorage, Alaska.

Attorneys for R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska. Ernest F. Jessen, Anthony Zorich and George Vaara as the Unemployment Compensation Commission of Alaska,
Defendants and Appellants.

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J. GERALD WILLIAMS,
Attorney at Law, Anchorage, Alaska,

Attorneys for United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry, Inc., a corporation; Pacific American Fisheries, Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation, a corporation; Ketchikan Spruce Mills, a corporation; Western Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble, d/b/a The Pioneer Cab Company, and all others similarly situated,
Intervenors and Appellants.

McCUTCHEON and NESBETT,
Attorneys at Law, Anchorage, Alaska,
Attorneys for Felton H. Griffin,
Plaintiff and Appellee. [1 *]

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* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court for the Territory of Alaska,
Third Division

No. A-4597 Civil

FELTON H. GRIFFIN,

Plaintiff,

vs.

R. E. SHELTON as Executive Director, Unemployment Compensation Commission of Alaska: ERNEST F. JESSEN, ANTHONY ZORICH, and GEORGE VAARA, as the Unemployment Compensation Commission of Alaska,

Defendants.

COMPLAINT

Comes now the plaintiff in the above-entitled action and complains and alleges as follows:

I.

That plaintiff is now and was at all times herein mentioned a resident citizen and taxpayer of the Territory of Alaska.

II.

That the defendant, R. E. Sheldon, is now, and at all times herein mentioned has been the Executive Director of the Unemployment Compensation Commission of Alaska and as such Executive Director is charged with the duties of administering the Alaska Unemployment Compensation Law as amended (Session Laws of Alaska, 1937, Chapter Four, as amended); that he is a citizen of the Territory of Alaska, residing at Juneau, Alaska.

III.

That defendants, Ernest F. Jessen, Anthony Zorich and George Vaara, are each resident citizen of the Territory of Alaska, and these three constitute, under due appointment and commission, the Unemployment Compensation Commission of Alaska.

IV.

That the Thirteenth Legislature for the Territory of Alaska in Extraordinary Session Assembled during the year 1937 passed an act entitled "An Act to provide for unemployment compensation; [2] to provide for the establishment of public employment offices; to provide funds therefor; to create a commission to administer the Act; and to define its duties; to provide for its appointment; to provide for cooperation with the United States of America, in the administration of the Act; to provide penalties for violation; to provide for an appropriation to carry the Act into effect; and to declare an emergency." Said act provided in Section 1 as follows: "This Act shall be known and may be cited as the Alaska Unemployment Compensation Law."

V.

That the Eighteenth Legislature for the Territory of Alaska in regular session assembled during the year 1947 purported to have passed an act amending the Alaska Unemployment Compensation Law; that the title of said purported amendment is as follows: "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and 51, Session Laws of

Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws 1941, by amending Subsection 7 (c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date."

VI.

That the said purported amendment provided in Subsection 7(c)(2) et seq thereof for the establishment of a system of "credits" for so-called "qualified employers", which said "credits" under an involved and complicated mathematical formula set out in the said amendment, could result in a "surplus", so called, in favor of employers within so-called "credit classes", resulting in "credit notices" being given to employers qualifying under the said amendment, said "credit notices" to be applied to reduce future unemployment compensation payments made by the employers qualifying [3] thereunder.

VII.

That the effect of the said so-called "Experience Rating" Amendment to the Alaska Unemployment Compensation Act will be to reduce payments to the Alaska Unemployment Compensation Fund in the approximate amount of one-half million dollars for the fiscal year commencing on July 1, 1947, and in increasing amounts yearly thereafter and that the "class" of employers benefitting most by reason of enactment of said amendment will be nonresident, seasonal employers, engaged in the fish and mining industries and not accountable for, nor

concerned with, the economy of the Territory of Alaska.

VIII.

That the said reductions will seriously affect the economy of the Territory; that nowhere in the title of the said amendment is the true nature and effect of the said amendment expressed; that the said amendment is invalid by reason of the fact that it does not comply with Section 8 of the Organic Act wherein it is expressly provided, "That the enacting clause of all laws passed by the legislature shall be 'Be it enacted by the Legislature of the Territory of Alaska.' No Law shall embrace more than one subject, which shall be expressed in its title."

IX.

That the said Experience Rating Bill (Senate Bill Number 105), in Section 2 thereof, further purports to amend the Unemployment Compensation Act by changing Subsection 4(d) thereof to reduce the waiting period from two to one week before benefits under the act can be claimed by an unemployed person.

X.

That nowhere in the title of the said bill is there an indication of the true nature and effect of the said amendment to subsection 4(d); the only words in the said title concerning the said amendment being as follows, to-wit: "* * * and amending subsection 4(d) * * *" (of the Unemployment Compensation Law.) [4]

XI.

That the said amendment to Subsection 4(d) is invalid by reason of failure to comply with Section 8 of the Organic Act, as amended, wherein it is expressly provided as follows, to-wit:

"That the enacting clause of all laws passed by the legislature shall be 'Be it enacted by the Legislature of the Territory of Alaska'. No law shall embrace more than one subject, which shall be expressed in its title."

XII.

That the said Experience Rating Bill (Senate Bill Number 105), while pending in the House of Representatives of the Territorial Legislature, and before a final vote had been conducted on the said bill by the members of the said House of Representatives, the said bill was ordered sent to the Senate of the Territorial Legislature and that the members of the said House failed to vote upon the said bill in final passage, and to enter the same upon the House Journal.

XIII.

That the said bill is invalid by reason of failure of the said House of Representatives to comply with Section 13 of the Organic Act (as amended) wherein it is specifically provided as follows:

"That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by majority vote of all members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by

the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the Clerk and sent to the other house for consideration."

XIV.

That the said Experience Rating Bill (Senate Bill Number 105), while before the House of Representatives of the Territorial Legislature, was not given three separate readings before the said [5] House and that the said bill is invalid by reason of the failure of the said House to comply with Section 13 of the Organic Act (as amended) which provides as follows:

"That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by majority vote of all members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration."

XV.

That after the purported passage of the Experience Rating Bill (Senate Bill Number 105), the same was vetoed by the Governor of Alaska; that thereafter the members of the House and Senate of the Territorial Legislature failed to vote upon the passage of said bill, the Governor's veto notwithstanding.

XVI.

That the said bill is invalid by reason of the failure of the members of the Legislature to comply with Section 14 of the Organic Act (as amended) providing as follows:

"That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the Governor. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the Governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter, unless sooner given effect by a two-thirds vote of said legislature. If the Governor does not approve such bill, he may return it, with his objections, to to the Legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. That upon the receipt of a veto message from the Governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-third vote of all members to which each house is entitled, it shall thereby become a law. That if the Governor neither signs nor vetoes a bill within [6] three days (Sundays excepted) after it is delivered to him, it shall become a law without his signature, unless the legis-

lature adjourns sine die prior to the expiration of such three days. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in a like manner as if he had signed it, unless the legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law."

XVII.

That the Governor of Alaska refused to sign said Experience Rating Bill (Senate Bill Number 105), and has not signed the same.

XVIII.

That the Eighteenth Territorial Legislature for the Territory of Alaska adjourned sine die prior to the third day after receipt of the said Experience Rating Bill (Senate Bill Number 105) by the Governor of Alaska.

XIX.

That the said Experience Rating Bill (Senate Bill Number 105) is invalid by reason of the refusal of the Governor of Alaska to sign said bill as is required by Section 14 of the Organic Act (as amended) in order for said bill to become a law.

Wherefore, plaintiff prays judgment against defendants, and each of them, as follows:

That defendants and each of them be enjoined and restrained from issuing credit notices or otherwise establishing credits for employers against sums due and owing or to become due and owing

under the Alaska Unemployment Compensation Law;

That the Court find and declare Chapter 74 of the Session Laws of Alaska for 1947 entitled, "An act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) [7] providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date," null and void and of no force and effect.

McCUTCHEON & NESBETT,
Attorneys for Plaintiff.
By /s/ S. McCUTCHEON.

United States of America,
Territory of Alaska—ss.

Felton H. Griffin, being first duly sworn, on oath, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing Complaint, knows the contents thereof, and the same is true as he verily believes.

/s/ FELTON H. GRIFFIN.

Subscribed and Sworn to before me this 11th day of July, 1947.

(Seal) /s/ S. McCUTCHEON,
Notary Public in and for Alaska.

My commission expires 12/29/47.

[Endorsed]: Filed July 11, 1947. [8]

[Title of District Court and Cause.]

AMENDED COMPLAINT

Comes now the plaintiff in the above-entitled action and complains and alleges as follows:

I.

That plaintiff is now and was at all times herein mentioned a resident citizen and taxpayer of the Territory of Alaska.

II.

That the defendant, R. E. Sheldon, is now, and at all times herein mentioned has been the Executive Director of the Unemployment Compensation Commission of Alaska and as such Executive Director is charged with the duties of administering the Alaska Unemployment Compensation Law as amended (Session Laws of Alaska, 1937, Chapter Four, as amended); that he is a citizen of the Territory of Alaska, residing at Juneau, Alaska.

III.

That defendants, Ernest F. Jessen, Anthony Zorich and George Vaara, are each resident citizens of the Territory of Alaska, and these three constitute, under due appointment and commission, the Unemployment Compensation Commission of Alaska. [9]

IV.

That the Thirteenth Legislature for the Territory of Alaska in Extraordinary Session Assembled during the year 1937 passed an act entitled "An Act to provide for unemployment compensation; to provide for the establishment of public employ-

ment offices; to provide funds therefor; to create a commission to administer the Act; and to define its duties; to provide for its appointment; to provide for cooperation with the United States of America in the administration of the Act; to provide penalties for violation; to provide for an appropriation to carry the Act into effect; and to declare an emergency." Said act provided in Section 1 as follows: "This Act shall be known and may be cited as the Alaska Unemployment Compensation Law."

V.

That the Eighteenth Legislature for the Territory of Alaska in regular session assembled during the year 1947 purported to have passed an act amending the Alaska Unemployment Compensation Law; that the title of said purported amendment is as follows: "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7 (c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date."

VI.

That the said purported amendment provided in Subsection 7(c)(2) et seq thereof for the establishment of a system of "credits" for so-called "qualified employers", which said "credits" under an involved and complicated mathematical formula

set out in the said amendment, could result in a "surplus", so called, in favor of employers within so-called "credit classes", resulting in "credit notices" being given to [10] employers qualifying under the said amendment, said "credit notices" to be applied to reduce future unemployment compensation payments made by the employers qualifying thereunder.

VII.

That the effect of the said so-called "Experience Rating" Amendment to the Alaska Unemployment Compensation Act will be to reduce payments to the Alaska Unemployment Compensation Fund in the approximate amount of one-half million dollars for the fiscal year commencing on July 1, 1947, and in increasing amounts yearly thereafter and that the "class" of employers benefiting most by reason of enactment of said amendment will be non-resident, seasonal employers, engaged in the fish and mining industries and not accountable for, nor concerned with, the economy of the Territory of Alaska.

VIII.

That the said reductions will seriously affect the economy of the Territory; that nowhere in the title of the said amendment is the true nature and effect of the said amendment expressed; that the said amendment is invalid by reason of the fact that it does not comply with Section 8 of the Organic Act wherein it is expressly provided, "That the enacting clause of all laws passed by the legislature shall be 'Be it enacted by the Legislature

of the Territory of Alaska.' No law shall embrace more than one subject, which shall be expressed in its title."

IX.

That the said Experience Rating Bill (Senate Bill Number 105), in Section 2 thereof, further purports to amend the Unemployment Compensation Act by changing Subsection 4(d) thereof to reduce the waiting period from two to one week before benefits under the act can be claimed by an unemployed person. [11]

X.

That nowhere in the title of the said bill is there an indication of the true nature and effect of the said amendment to Subsection 4(d); the only words in the said title concerning the said amendment being as follows, to-wit: "* * * and amending Subsection 4(d) * * *" (of the Unemployment Compensation Law).

XI.

That the said amendment to Subsection 4(d) is invalid by reason of failure to comply with Section 8 of the Organic Act, as amended, wherein it is expressly provided as follows, to-wit:

"That the enacting clause of all laws passed by the legislature shall be 'Be it enacted by the Legislature of the Territory of Alaska'. No law shall embrace more than one subject, which shall be expressed in its title."

XII.

That the said Experience Rating Bill (Senate Bill Number 105), while pending in the House of

Representatives of the Territorial Legislature, and before a final vote had been conducted on the said bill by the members of the said House of Representatives, the said bill was ordered sent to the Senate of the Territorial Legislature and that the members of the said House failed to vote upon the said bill in final passage, and to enter the same upon the House Journal.

XIII.

That the said bill is invalid by reason of failure of the said House of Representatives to comply with Section 13 of the Organic Act (as amended) wherein it is specifically provided as follows:

"That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by majority vote of all members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration." [12]

XIV.

That the said Experience Rating Bill (Senate Bill Number 105), while before the House of Representatives of the Territorial Legislature, was not given three separate readings before the said House and that the said bill is invalid by reason of the failure of the said House to comply with Section 13 of the Organic Act (as amended) which provides as follows:

"That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by majority vote of all members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration."

XV.

That after the purported passage of the Experience Rating Bill (Senate Bill Number 105), the same was vetoed by the Governor of Alaska; that thereafter the members of the House and Senate of the Territorial Legislature failed to vote upon the passage of said bill, the Governor's veto notwithstanding.

XVI.

That the said bill is invalid by reason of the failure of the members of the Legislature to comply with Section 14 of the Organic Act (as amended) providing as follows:

"That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the Governor. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the Governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter,

unless sooner given effect by a two-thirds vote of said legislature. If the Governor does not approve such bill, he may return it, with his objections, to the Legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. That upon the receipt of a veto message from the Governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, [13] which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-third vote of all the members to which each house is entitled, it shall thereby become a law. That if the Governor neither signs nor vetoes a bill within three days (Sundays excepted) after it is delivered to him, it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such three days. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in a like manner as if he had signed it, unless the legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law."

XVII.

That the Governor of Alaska refused to sign said Experience Rating Bill (Senate Bill Number 105), and has not signed the same.

XVIII.

That the Eighteenth Territorial Legislature for the Territory of Alaska adjourned sine die prior to the third day after receipt of the said Experience Rating Bill (Senate Bill Number 105) by the Governor of Alaska.

XIX.

That the said Experience Rating Bill (Senate Bill Number 105) is invalid by reason of the refusal of the Governor of Alaska to sign said bill as is required by Section 14 of the Organic Act (as amended) in order for said bill to become a law.

XX.

That plaintiff is informed and believes, and therefore alleges on such information and belief that the defendants herein, their servants, agents or employees, are about to issue experience rating credits to various employers pursuant to the said Experience Rating Bill (Senate Bill Number 105).

XXI.

That if the said experience rating credits are issued it will result in a wrongful, illegal and unlawful loss of funds of the Territory of Alaska, and without any authority of the Law, [14] or right, and will be wholly lost to the taxpayers of the Territory of Alaska, and that plaintiff and all other taxpayers of the Territory of Alaska will be irreparably damaged and injured thereby, and all without any possible redress or any plain, speedy or adequate remedy at law.

Wherefore, plaintiff prays judgment against defendants, and each of them, as follows:

That defendants and each of them be enjoined and restrained from issuing credit notices or otherwise establishing credits for employers against sums due and owing or to become due and owing under the Alaska Unemployment Compensation Law;

That the Court find and declare Chapter 74 of the Session Laws of Alaska for 1947 entitled, "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date", null and void and of no force and effect.

That plaintiff be allowed a temporary restraining order, enjoining and restraining defendants, and each of them, from issuing credit notices or otherwise establishing credits for employers against sums due and owing or to become due and owing under the Alaska Unemployemnt Compensation Law.

McCUTCHEON & NESBETT,
Attorneys for Plaintiff.

By /s/ STANLEY McCUTCHEON.

United States of America,
Territory of Alaska—ss.

Felton H. Griffin, being first duly sworn, on oath deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing Amended Complaint, knows the contents thereof, and the same are true as he verily believes.

/s/ FELTON H. GRIFFIN,

Subscribed and Sworn to before me this 2nd day of August, 1947.

/s/ S. McCUTCHEON,
Notary Public in and for Alaska.

My commission expires 12/29/47.

[Endorsed]: Filed Aug. 6, 1947.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO INTERVENE

Come now the United States Smelting, Refining & Mining Company, a corporation, Alaska Laundry, Inc., a corporation, Pacific American Fisheries, Inc., a corporation, Healy River Coal Corporation, a corporation, Juneau Spruce Corporation, a corporation, Ketchikan Spruce Mills, a corporation, Western Fisheries Company, a corporation, Wells Alaska Motors, a co-partnership, and Joe Coble, doing business as The Pioneer Cab Company, and move the Court for Leave to Intervene in the above

entitled cause under the provisions of Section 3394 Compiled Laws of Alaska, 1933, and for leave to file the hereto attached Complaint in Intervention, and for leave to file an Answer to Plaintiff's Amended Complaint and to otherwise move against the Amended Complaint upon the ground that each of the proposed intervenors has an interest in the subject matter in litigation and in the allegations of the Amended Complaint and they will be affected by the outcome of this cause for the reasons set forth in the proposed complaint in intervention attached hereto.

/s/ FAULKNER & BANFIELD,

/s/ J. GERALD WILLIAMS,
Attorneys for Intervenors.

(Service of Copy Acknowledged August 29, 1947. Frank L. Oliver, of Counsel for Defendants.)

[Endorsed]: Filed Sept. 8, 1947. [17]

In the District Court for the Territory of Alaska,
Division Number Three

No. A-4597 Civil

FELTON H. GRIFFIN,

Plaintiff,

vs.

R. E. SHELDON as Executive Director, Unemployment Compensation Commission of Alaska: ERNEST F. JESSEN, ANTHONY ZORICH, and GEORGE VAARA as the Unemployment Compensation Commission of Alaska,

Defendants,

UNITED STATES SMELTING, REFINING & MINING COMPANY, a corporation; ALASKA LAUNDRY, INC., a corporation; PACIFIC AMERICAN FISHERIES, INC., a corporation; HEALY RIVER COAL CORPORATION, a corporation; JUNEAU SPRUCE CORPORATION, a corporation: KETCHIKAN SPRUCE MILLS, a corporation; WESTERN FISHERIES COMPANY, a corporation; WELLS ALASKA MOTORS, a copartnership; and JOE COBLE, d/b/a THE PIONEER CAB COMPANY, and all others similarly situated,

Intervenors.

COMPLAINT IN INTERVENTION

Come now the above named intervenors and petitioners, by leave of court, and represent, complain and allege as follows:

I.

That the above entitled cause is pending in the District Court for the Territory of Alaska, Third Judicial Division at Anchorage, Alaska, and it is brought for the purpose of testing the validity of Chapter 74 of the Session Laws of Alaska, 1947, entitled:

> "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapters 1 and 51 Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date." [18]

and Plaintiff in his complaint alleges that the Act is unconstitutional and void.

II.

That the above named intervenors and others are all doing business in the Territory of Alaska and authorized to do business therein and the intervening corporations have all complied with the laws of the Territory relating to corporations doing business in Alaska and they have all paid their corporation license taxes due the Territory and complied with all the laws of the Territory with reference to corporations; and that the United States Smelting, Refining and Mining Company is a corporation organized under the laws of the State of Maine; The Alaska Laundry, Inc. is a corpora-

tion organized under the laws of Alaska; the Pacific American Fisheries, Inc. is a corporation organized under the laws of Delaware; the Healy River Coal Corporation is a corporation organized under the laws of Alaska; the Juneau Spruce Corporation is a corporation organized under the laws of Alaska; the Ketchikan Spruce Mills is a corporation organized under the laws of Alaska; the Western Fisheries Company is a corporation organized under the laws of Washington; Wells Alaska Motors is a co-partnership doing business at Fairbanks, Alaska; and Joe Coble is a resident of Fairbanks, Alaska doing business as The Pioneer Cab Company.

III.

That each of the intervenors is interested in the above entitled cause and has an interest in the matter in litigation, and each and every employer of labor in the Territory has a similar interest.

IV.

That each of the intervenors pays a substantial sum into the unemployment compensation fund of the Territory of Alaska every quarter of each year and most of them have been so doing [19] since the date of the enactment of Chapter 4 Extraordinary Session Laws of Alaska 1937, hereinafter referred to.

V.

That the Juneau Spruce Corporation, a corporation organized under the laws of Alaska is engaged in lumbering and logging and in the operation of a saw mill at Juneau and it is successor of the

Juneau Lumber Mills, Inc., a corporation which carried on the same business until May 1, 1947 when its business and operations were taken over by the Juneau Spruce Corporation. That the Juneau Lumber Mills, predecessor in interest to the Juneau Spruce Corporation since the date of the enactment of the unemployment compensation law paid large sums into the unemployment compensation fund of the Territory each quarter and for the months of May and June, 1947 the Juneau Spruce Corporation had a payroll of $129,315.07 and for those two months it paid into the unemployment compensation fund of the Territory the sum of $3,490.52. That it now employs 257 men and its monthly current payroll is approximately $126,800 which will require payments into the unemployment compensation fund of Alaska of more than $41,000 annually.

VI.

That the Ketchikan Spruce Mills for the year ending January 31, 1946 had a total payroll of $387,847.06 with an average number of employees of 119 and during that period it paid into the unemployment compensation fund of Alaska the sum of $10,471.87.

VII.

That the Pacific American Fisheries, Inc. has paid large sums into the unemployment compensation fund since the date of the passage of the Act aforesaid and its payments average between $40,000 and $50,000 per annum and for the year beginning July 1, 1946 and ending June 30, 1947 it

paid into the unemployment compensation fund $42,047.10. [20]

VIII.

That the Western Fisheries Company, a corporation, has paid large sums of money into the unemployment compensation fund since the date of the passage of the Act aforesaid and for the year beginning April 1, 1946 and ending March 31, 1947 it paid an unemployment compensation tax of $6,190.59.

IX.

That the United States Smelting, Refining and Mining Company has a payroll from a minimum of 218 to a maximum of 642 employees annually. That its payroll to employees for the period from July 1, 1946 to June 30, 1947 was $880,026.67 and it paid into the unemployment compensation fund of Alaska during that period $23,760.72.

X.

That the Healy River Coal Corporation has an average number of employees in Alaska of 101 and during the period of July 1, 1946 to June 30, 1947 it paid into the unemployment compensation fund the sum of $11,361.47.

XI.

That the Alaska Laundry, Inc. owns and operates a laundry at Juneau, Alaska, employing an average of 25 employees and that during the period from July 1, 1946 to June 30, 1947 it paid into the unemployment compensation fund of Alaska the sum of $1,089.92 in contributions.

XII.

That the Wells Alaska Motors and Joe Coble are employers of labor in Alaska and they pay annually into the unemployment compensation fund substantial contributions.

XIII.

That on April 2, 1937, the Legislature of the Territory of Alaska assembled in Extraordinary Session passed an Act entitled [21]

"An Act to provide for unemployment compensation; to provide for the establishment of public employment offices; to provide funds therefor; to create a commission to administer the act; and to define its duties; to provide for its appointment; to provide for cooperation with the United States of America in the administration of the Act; to provide penalties for violation; to provide for an appropriation to carry the Act into effect; and to declare an emergency."

And this Act was approved on April 2, 1937 and became effective immediately and it has been amended from time to time in minor details.

XIV.

That Chapter 4 of the Session Laws of Alaska 1937 and the amendments thereto provide for levying an unemployment compensation tax on certain employers of labor in the Territory including the intervenors of 2.7% of their entire pay roll which amounts are collected for the purpose of furnishing benefits to workers employed in the Territory and contributions and payments have been made from time to time and from year to year by employers in the Territory including the intervenors so that

when the Legislature convened in Juneau in January of 1947 there was approximately $9,300,000 in the unemployment compensation fund.

XV.

That Chapter 4 of the Extraordinary Session Laws of Alaska 1937 was amended by Chapter 40 of the Session Laws of 1941, approved March 26, 1941 and among the amendments there is an amendment to Section 7(c) of Chapter 4 of the Laws of 1937 which is contained in Section 20 of Chapter 40 of the laws of 1941 and this amendment reads as follows:

Section 20 of Chapter 40 of the Laws of 1941—

"That Chapter 4, Section 7(c), 7(c)(1), 7(c)(2), Extraordinary Session Laws of Alaska, 1947, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, be amended by striking out the present sections and inserting in lieu thereof the following: [22]

"Section 7(c). 'Study of Experience Rating.' The Commission shall investigate and study the operation of this Act and the actual experience hereunder in the light of pertinent economic factors with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer and would encourage stabilization of employment."

XVI.

That pursuant to the provisions of Section 20, Chapter 40 of the Session Laws of 1941, the Legislature in 1947 passed Chapter 74 of the Session Laws of 1947 hereinabove mentioned.

XVII.

That Chapter 74 of the Session Laws of Alaska 1947 was in the judgment of the intervenors duly, regularly and lawfully passed by the Legislature of the Territory of Alaska in its Eighteenth Session, and each of these intervenors is entitled to all the benefits to be received by the application thereof as they are still employers of labor in the Territory of Alaska and will continue to be from year to year.

XVIII.

That those intervenors have no plain, speedy or adequate remedy at law and are entitled to interpose such defense to plaintiff's complaint as may be lawfully interposed under the laws of Alaska.

Wherefore these intervenors pray that they may be permitted to defend the action above mentioned No. A-4597 Civil, pending in the above entitled court and file an answer to plaintiff's complaint and introduce such evidence and file such briefs and make such arguments as are proper in the defense of the validity of the law in question and proceed as though they had been made defendants in the above entitled cause; and that plaintiff take nothing by his complaint, but that it be dismissed and that these intervenors have such other and further relief as is meet in the premises. [23]

/s/ FAULKNER & BANFIELD,

/s/ J. GERALD WILLIAMS,
Attorneys for Intervenors.

United States of America,
Territory of Alaska—ss.

I, the undersigned, J. S. MacKinnon, being first duly sworn depose and say:

That I am President of the Alaska Laundry, Inc., a corporation, one of the Intervenors hereinabove named and am authorized to make this verification on its behalf; that I have read the foregoing "Complaint in Intervention" and know its contents and that the facts stated therein are true and correct as I verily believe.

/s/ J. S. MacKINNON.

Subscribed and sworn to before me this 29th day of August, 1947.

(Seal) /s/ M. J. LYMAN,
Notary Public for Alaska.

My Commission expires Aug. 21, 1950.

United States of America,
Territory of Alaska—ss.

I, H. L. Faulkner, being first duly sworn depose and say:

That I am one of the attorneys for the intervenors hereinabove named and make this verification on behalf of all of them; that I have read the foregoing "Complaint in Intervention" and know its contents and I am familiar with the facts therein alleged and that the facts alleged and the statements made are true and correct as I verily believe; and that I make this verification for and on

behalf of all the intervenors except the Alaska Laundry, Inc., for the reason that none of the intervenors is at the place where the verification is required to be made and I have been authorized to make the verification for and on behalf of the intervenors.

/s/ H. L. FAULKNER.

Subscribed and sworn to before me this 29th day of August, 1947.

(Seal) /s/ M. J. LYMAN.
Notary Public for Alaska.

Service of copy acknowledged August 29, 1947. Signed Frank L. Oliver, of Counsel for Defendants.

[Endorsed]: Filed Sept. 8, 1947. [24]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION

Comes now the above named plaintiff, and in answer to Intervenors' Complaint in Intervention, alleges as follows:

I.

Denies each and every allegation contained in Intervenors' Complaint.

Wherefore, plaintiff, having fully answered Intervenors' Complaint, prays judgment against the defendant as asked in plaintiff's Complaint.

McCUTCHEON & NESBETT,
Attorneys of Plaintiff,
By /s/ S. McCUTCHEON. [25]

United States of America,
Territory of Alaska,
Third Judicial Division—ss.

Felton H. Griffin, being first duly sworn upon his oath, deposes and says:

That he is the plaintiff in the above entitled action; that he has read the foregoing Answer, knows the contents thereof, and that the matters and things contained therein are true as he verily believes.

/s/ FELTON H. GRIFFIN.

Subscribed and sworn to before me this 13th day of March, 1948.

/s/ S. McCUTCHEON,
Notary Public in and for the Territory of Alaska.

(Service of Copy Acknowledged April 15, 1948. J. Gerald Williams, Attorney for Defendants.)

[Endorsed]: Filed April 15, 1948. [26]

[Title of District Court and Cause.]

ORDER PERMITTING INTERVENTION

Upon reading and filing the motion of the above named Intervenors and also upon inspection of the "Complaint in Intervention",

It is hereby ordered that the above named corporations and persons who are named as Intervenors be and they are hereby permitted to intervene in the above entitled cause and to file herein their Complaint in Intervention and such motions as they deem necessary and advisable and to answer

the amended complaint of plaintiff and to proceed in this cause as intervenors pursuant to law.

Done in open court this 12th day of September, 1947.

/s/ ANTHONY J. DIMOND,
Judge.

/s/ FRANK L. OLIVER,
of Counsel for Defendants.

Entered Court Journal No. G 15 Page 107, Sept. 12, 1947.

Service of copy acknowledged Aug. 29, 1947.

[Endorsed]: Filed Sept. 12, 1947. [27]

[Title of District Court and Cause.]

ANSWER

Come now the above named defendants, and in answer to the Amended Complaint on file herein, admit, deny and allege as follows:

1.

Admit the allegations contained in Paragraphs numbered I, II, III and IV of said Amended Complaint.

2.

Admit that the Eighteenth Legislature passed the Act referred to in Paragraph numbered V, but deny the implication of invalidity.

3.

Deny the allegations contained in Paragraph numbered VI save and except admit that the amend-

ment contained in subsection 7(c)(2) et seq. provides for the establishment of a system of credits for qualified employers under a formula [28] set out in the amendment, which credits may be applied to reduce future unemployment compensation payments made by qualified employers.

4.

Deny the allegation contained in Paragraphs numbered VII and VIII.

5.

Referring to the allegations contained in Paragraph numbered IX, admit that said Act changes subsection 4(d) thereof as stated, but deny the implication of invalidity.

6.

Deny the allegations contained in Paragraphs numbered X to XVI, inclusive.

7.

Referring to the allegations contained in Paragraph numbered XVII, admit that the Governor of Alaska did not sign the Act referred to, but allege that he expressly permitted it to become law without his signature, in the manner provided by the Organic Act.

8.

Deny the allegations contained in Paragraphs numbered XVIII and XIX.

9.

Admit the allegations contained in Paragraph numbered XX.

10.

Deny the allegations contained in Paragraph numbered XXI.

Wherefore, the defendants pray that the Amended Complaint be dismissed and that plaintiff take nothing thereby, [29] and defendants be allowed costs herein.

/s/ RALPH J. RIVERS,
Attorney General for Alaska.

/s/ FRANK L. OLIVER,
Assistant Attorney General,
Attorneys for Defendants.

(Duly Verified.)

[Endorsed]: Filed Sept. 9, 1947. [30]

[Title of District Court and Cause.]

ANSWER OF INTERVENORS TO PLAINTIFF'S AMENDED COMPLAINT

Come now the above named Intervenors for themselves and all other employers in Alaska similarly situated and in answer to plaintiff's Amended Complaint, admit, deny and allege as follows:

I.

Referring to the allegations contained in paragraph I of the Amended Complaint, the Intervenors have no knowledge upon which to base a belief as to the truth thereof, and therefore on information and belief deny the allegations contained in paragraph I.

II.

The Intervenors admit the allegations contained in paragraph II.

III.

The Intervenors admit the allegations contained in paragraph III. [31]

IV.

The Intervenors admit the allegations contained in paragraph IV.

V.

The Intervenors admit that the Eighteenth Legislature for the Territory of Alaska in regular session assembled during the year 1947 regularly passed the Act referred to in Paragraph V of the Amended Complaint.

VI.

Referring to the allegations contained in paragraph VI, the Intervenors admit that the amendment contained in subsection 7(c)(2) et seq. provides for the establishment of a system of credits for qualified employers under a formula set out in the amendment, which credits may be applied to reduce future unemployment compensation payments made by qualified employers and the Intervenors deny each and every other allegation contained in paragraph VI of the Amended Complaint.

VII.

Referring to the allegations contained in paragraph VII the Intervenors admit that the effect of the "Experience Rating" amendment will be to reduce payments to the Alaska Unemployment Compensation Fund; deny that it will reduce the

payments one-half million dollars for the fiscal year commencing July 1, 1947, and in an increasing amount yearly thereafter; deny that the class of employers benefiting most by reason of the enactment of the amendment will be non-resident seasonal employers engaged in fish and mining industries; deny that those employers engaged in fish and mining industries are not concerned with the economy of the Territory and the Intervenors allege that the Act in question provides for automatic adjustments of the amount of credits so as not to impair the unemployment compensation fund. [32]

VIII.

The Intervenors deny that the reduction in contributions provided by the Act in question will have any effect upon the economy of the Territory; deny that the nature and effect of the amendment is not expressed in the title; deny that the amendment is invalid; deny that it is in conflict with Section 8 of the Organic Act or with any other provision of the Organic Act.

IX.

Intervenors admit the allegations contained in paragraph IX of the Amended Complaint.

X.

Intervenors deny the allegations contained in paragraph X of the Amended Complaint.

XI.

Intervenors deny the allegations contained in paragraph XI of the Amended Complaint.

XII.

Intervenors deny the allegations contained in paragraph XII of the Amended Complaint.

XIII.

Intervenors deny the allegations contained in paragraph XIII of the Amended Complaint.

XIV.

Intervenors deny the allegations contained in paragraph XIV of the Amended Complaint.

XV.

Intervenors deny the allegations contained in paragraph XV of the Amended Complaint.

XVI.

Referring to the allegations contained in paragraph XVI, the Intervenors deny that the law is invalid by reason of the failure of the Legislature to comply with Section 14 of the Organic Act [33] of Alaska as amended, and in this connection they allege that while the Governor of Alaska did not approve the Act in question he expressly allowed it to become law without his signature as provided by the Organic Act of Alaska.

XVII.

The Intervenors admit the Governor of Alaska did not sign the "Experience Rating" Bill but alleges that he expressly permitted it to become a law in the manner provided in the Organic Act without his signature.

XVIII.

Intervenors deny the allegations contained in paragraph XVIII of the Amended Complaint.

XIX.

Intervenors deny the allegations contained in paragraph XIX of the Amended Complaint.

XX.

Referring to the allegations contained in paragraph XX the Intervenors admit that the defendants, pursuant to the provisions of the Act of the Legislature aforesaid, should issue experience rating credits to various employers pursuant to the provisions of the Experience Rating Bill.

XXI.

Intervenors deny the allegations contained in paragraph XXI.

Wherefore these Intervenors pray that Plaintiff's Amended Complaint herein be dismissed, and that he take nothing thereby, and that the Intervenors have such other and further relief as is meet in the premises.

FAULKNER AND BANFIELD,
J. GERALD WILLIAMS,
Attorneys for Intervenors. [34]

United States of America,
Territory of Alaska—ss.

I, the undersigned, J. S. MacKinnon, being first duly sworn depose and say: That I am the President of the Alaska Laundry, Inc., a corporation, one of the Intervenors hereinabove named and am authorized to make this verification on its behalf; that I have read the foregoing Answer and know its contents and that the facts stated therein are

true and correct as I verily believe and I make this verification for all of the Intervenors.

/s/ J. S. MacKINNON.

Subscribed and sworn to before me this 29th day of August, 1947.

(Seal) /s/ H. L. FAULKNER,
Notary Public for Alaska.

United States of America,
Territory of Alaska—ss.

I, H. L. Faulkner being first duly sworn, depose any say: That I am one of the attorneys for the Intervenors hereinabove named and make this verification on behalf of all of them; that I have read the foregoing Answer and know its contents and I am familiar with the facts therein alleged and that the facts alleged and the statements made are true and correct as I verily believe and that I make this verification for and on behalf of all the intervenors except the Alaska Laundry, Inc., a corporation, for the reason that none of the Intervenors is at the place where the verification is required to be made. That I am authorized to make this verification on behalf of all the Intervenors and as agent of each.

/s/ H. L. FAULKNER.

Subscribed and sworn to before me this 29th day of August, 1947.

(Seal) /s/ MARY JANE LYMAN,
Notary Public for Alaska.

Service of Copy Acknowledged August 29, 1947. Frank L. Oliver of Counsel for Defendants.

[Endorsed): Filed Sept. 13, 1947. [35]

[Title of District Court and Cause.]

REPLY TO INTERVENORS' ANSWER

Comes now the plaintiff in the above entitled action, and replies to the Intervenors' Answer on file herein as follows:

I.

The plaintiff denies each and every allegation contained in Intervenors' Answer.

Wherefore, plaintiff prays judgment against the defendant as asked in his Complaint.

McCUTCHEON & NESBETT,
Attorneys for the Plaintiff,

By /s/ S. McCUTCHEON. [36]

(Duly Verified.)

[Endorsed]: Filed April 15, 1948. [37]

[Title of District Court and Cause.]

REPLY

Comes now the plaintiff in the above entitled action, and replies to the Answer on file herein as follows:

I.

The plaintiff denies each and every allegation contained in defendant's Answer.

Wherefore, plaintiff prays judgment against the defendant as asked in his Complaint.

McCUTCHEON & NESBETT,
Attorneys for the Plaintiff,

By /s/ STANLEY McCUTCHEON.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed April 15, 1948. [38]

[Title of District Court and Cause.]

STIPULATION FOR INTRODUCTION OF EVIDENCE

It is hereby stipulated and agreed by and between Plaintiff, Defendants and Intervenors through their respective counsel that upon the trial of the above entitled cause there may be introduced in evidence by either the Plaintiff, the Defendants or the Intervenors, the bound printed volumes of the House and Senate Journals of the Alaska Legislature for the year 1947, Eighteenth Session, for the convenience of the Court in referring to the pertinent parts of the Journals involved in the above entitled cause, and that these printed copies of the Journals may be received as authentic and true copies of the proceedings in the Eighteenth Session.

It is further stipulated that United States Smelting, Refining and Mining Company, Pacific American Fisheries, Inc., Alaska Laundry, Inc., Healy River Coal Corporation, Juneau Spruce Corporation, Ketchikan Spruce Mills, Western Fisheries Company are all corporations authorized to do business and doing business in Alaska as alleged in the complaint in intervention and that Wells Alaska Motors is and was at all times alleged a co-partnership doing business in Alaska and that Joe Coble is and was at all times an individual doing business at Fairbanks, Alaska, under the name of Pioneer Cab Company.

Dated this 22nd day of March, 1948, at Juneau,

Alaska, by attorneys for defendants and intervenors, and at Anchorage, Alaska, by the attorneys for plaintiff the 1st day of April, 1948.

/s/ S. W. McCUTCHEON,
Attorney for Plaintiff.

/s/ RALPH J. RIVERS,
Attorney for Defendant.

/s/ FAULKNER & BANFIELD,

/s/ MEDLEY AND HAUGLAND,

/s/ J. GERALD WILLIAMS,

/s/ W. C. ARNOLD,

[Endorsed]: Filed Apr. 5, 1948. [41]

MINUTES OF PROCEEDINGS

April 20, 1948

Now at this time cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska; Ernest J. Jessen, Anthony Zorich, and George Vaara as the Unemployment Compensation Commission of Alaska, defendants, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry, Inc., a corporation; Pacific American Fisheries, Inc., a corporation, Healy River Coal Corporation, a corporation; Juneau Spruce Corporation, a corporation; Ketchikan Spruce Mills, a corporation; and West-

ern Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble, d/b/a The Pioneer Cab Company, and all others similarly situated, intervenors, came on regularly for trial, the plaintiff not being present in court but being represented by Stanley J. McCutcheon and Buell A. Nesbett, of his counsel, Herbert L. Faulkner, Edward Medley and J. Gerald Williams, appearing for and in behalf of the defendants and intervenors. The following proceedings were had, to-wit:

Opening statement to the Court was had by Stanley J. McCutcheon, for and in behalf of the Plaintiff.

Statement to the Court was had by Herbert L. Faulkner, for and in behalf of the defendants.

Lew M. Williams, being first duly sworn testified for and in behalf of the plaintiff.

A certified copy of Senate Bill No. 105 in the Legislature of the Territory of Alaska, Eighteenth Session was duly offered, marked and admitted as plaintiff's exhibit No. 1.

A certified copy of a letter dated March 27, 1947 to President of Senate Eighteenth Territorial Legislature, Territory of Alaska signed by Ernest Gruening, Governor of Alaska, with opinion by Ralph J. Rivers, Attorney General, Territory of Alaska, was duly offered, marked and admitted as intervenors exhibit "A".

Argument to the Court was had by Buell A. Nesbett, for and in behalf of the plaintiff.

At 11:12 o'clock a.m. Court continued cause to 11:20 o'clock a.m.

Entered Court Journal No. G 16 Page No. 293, Apr. 20, 1948. [42]

Now came the respective counsel as heretofore and the trial of cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska; Ernest F. Jessen, Anthony Zorich and George Vaara, as the Unemployment Compensation Commission of Alaska, defendants, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry, Inc., a corporation; Pacific American Fisheries, Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation; Ketchikan Spruce Mills, a corporation, Western Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble d/b/a The Pioneer Cab Company, and all others similarly situated, intervenors, was resumed.

Argument to the Court was had by Stanley J. McCutcheon, for and in behalf of the plaintiff.

At 11:47 o'clock a.m. Court continued cause to 1:45 o'clock p.m.

Entered Court Journal No. G 16 Page 294, Apr. 20, 1948. [43]

Now came the respective counsel as heretofore and the trial of cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation

Commission of Alaska; Ernest F. Jessen, Anthony Zorich and George Vaara, as the Unemployment Compensation Commission of Alaska, defendants, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry Inc., a corporation; Pacific American Fisheries Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation; Ketchikan Spruce Mills, a corporation; Western Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble d/b/a The Pioneer Cab Company, and all others similarly situated, intervenors, was resumed.

Argument to the Court was resumed by Stanley J. McCutcheon, for and in behalf of the plaintiff.

At 2:20 o'clock p.m. Court continued cause to 2:30 o'clock p.m.

Entered Court Journal No. G 16, Page No. 295, Apr. 20, 1948. [44]

Now came the respective counsel as heretofore and the trial of cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska; Ernest F. Jessen, Anthony Zorich and George Vaara, as the Unemployment Compensation Commission of Alaska, defendants, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry Inc., a corporation; Pacific American Fisheries Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation; Ketchikan Spruce Mills, a corporation; Western Fisheries

Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble d/b/a The Pioneer Cab Company, and all others similarly situated, intervenors, was resumed.

Argument to the Court was resumed by Stanley J. McCutcheon, for and in behalf of the plaintiff.

Argument to the Court was had by Herbert L. Faulkner, for and in behalf of the intervenors.

At 3:45 o'clock p.m. Court continued cause to 3:55 o'clock p.m.

Entered Court Journal No. G 16, Page No. 295, Apr. 20, 1948. [45]

Now came the respective counsel as heretofore and the trial of cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska, et al., was resumed.

Argument to the Court was resumed by Herbert L. Faulkner, for and in behalf of the intervenors.

Argument to the Court was had by Edward Medley, for and in behalf of the intervenors.

Argument to the Court was had by J. Gerald Williams, for and in behalf of the defendants, as associate counsel and appearing for Ralph Rivers, Territorial Attorney General.

Argument to the Court was had by Buell A. Nesbett, for and in behalf of the plaintiff.

Argument to the Court was had by Stanley J. McCutcheon, for and in behalf of the plaintiff.

House Journals of Alaska for year 1947, 2 volumes, and volume Robert's Rules of Order, Re-

vised, were duly offered, marked and admitted as Court's exhibit No. 100, No. 101 and No. 102.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, announced it would reserve decision.

Entered Court Journal No. G 16, Page No. 295, Apr. 20, 1948. [46]

[Title of District Court and Cause.]

OPINION

McCutcheon & Nesbett, of Anchorage, Alaska, Attorneys for the Plaintiff.

Ralph J. Rivers, Attorney General of Alaska, Attorney for the Defendants.

H. L. Faulkner, of Juneau, Alaska, and Edward F. Medley, of Seattle, Washington, Attorneys for the Intervenors.

In this action the plaintiff challenges the validity of an Act of the Alaska Territorial Legislature passed at the 1947 session of that body and appearing in official print as Chapter [47] 74 of the Session Laws of Alaska, 1947. The defendant, R. E. Sheldon, is the executive director of the Unemployment Compensation Commission of Alaska and the defendants, Ernest F. Jessen, Anthony Zorich and George Vaara, are members of the Commission. The several intervenors are corporations having an interest in the outcome of this litigation

since they will be financially affected by the decision given herein.

The plaintiff brings this suit as a resident and taxpayer of Alaska. His averments to that effect in his complaint are admitted by the defendants' answer. The intervenors, but not the defendants, dispute the right of the plaintiff as a citizen and taxpayer to bring and maintain this action. While the issue was not raised by demurrer, the jurisdiction of the Court is questioned and, therefore, notice must be taken of it.

The action involves the validity of an amendment of one important feature of the Unemployment Compensation Act of Alaska. This Act bears such an intimate relation to the economic well being of the Territory that the fate of that portion of the Act which is here involved may well affect every citizen and taxpayer in the territory. The decision here given may conceivably sway the establishment of enterprise or the undertaking of employment in Alaska. Accordingly, the plaintiff as a citizen and taxpayer was eligible to bring, and is eligible to maintain, this action.

The Unemployment Compensation Act of Alaska was originally enacted at an extraordinary session of the Alaska Territorial Legislature held in 1937, and is Chapter 4 of the Session Laws of that session. At subsequent sessions of the legislature the law has been extensively amended, the latest enactment being that of 1947 which is here in issue. The original law, with the several amendments, covers all of the various features of [48] unemployment

compensation legislation and was enacted pursuant to federal legislation on the subject. Every aspect of unemployment compensation is evidently taken care of in the Act.

It is asserted in the plaintiff's amended complaint that the principal beneficiaries of the questioned legislation are "non-resident, seasonal employers, engaged in the fish and mining industries and not accountable for, nor concerned with, the economy of the Territory of Alaska." (Par. VII)

All such considerations are totally irrelevant. We are here concerned with the legal status of what appears to be a legislative act, and not with the wisdom or expediency of its enactment. Moreover, constitutions and statutes and the elementary principles of justice unite in the mandate that no discrimination be shown between residents and non-residents, between "Saints and Strangers."

Four grounds of invalidity of the Act of 1947 are urged:

(1) That the enacting clause of the law is inadequate because it does not conform with the requirements of Section 8 of the Act of August 24, 1912, 37 Stat. 514; 48, Sec. 76, U.S.C.A., which provides: "No law [enacted by the Alaska Territorial Legislature] shall embrace more than one subject, which shall be expressed in its title." The Act of August 24, 1912, is commonly known as the Organic Act of Alaska and will be hereinafter referred to as the Organic Act.

(2) That the bill was not lawfully passed by the House because a motion to reconsider duly and

regularly made was declared out of order and not voted upon by the House, in violation of the rules of the House. [49]

(3) That the bill was vetoed by the Governor and was not thereafter considered or voted upon by either House of the Legislature.

(4) That the bill in passage by the House did not have "three separate readings" as required by Section 13 of the Organic Act, 48 Sec. 85 U.S.C.A.

In order to understand several of the points involved it is necessary to give a history of the legislation.

The bill, known as Senate Bill No. 105, was introduced in the Senate and was considered by that body and passed in due course. It then came into the House on the 47th day of the session and was read the first time and referred to appropriate committees, House Journal page 648. In this connection it is to be noted that under the Organic Act, sessions of the legislature are limited to 60 days. On the 50th day of the session the committee reported the bill back to the House recommending enactment, House Journal, page 683. Not until the 55th day of the session was the bill brought up in the House for consideration and read the second time, House Journal, page 843, whereupon numerous amendments to the bill were offered and voted upon, House Journal, pages 843 to 848. At the conclusion of all the amendments we find the following: "It was moved by Mrs. Engstrom, seconded by Mr. D. Anderson, that the Rules be suspended as to Senate Bill No. 105, that it be considered re-engrossed, advanced to third reading, read

by number only and placed in final passage." House Journal, pages 848 and 849. Vote was thereupon taken and the rules were suspended and the bill passed by a vote of 16 yeas to 8 nays. The Journal recites that "Senate Bill No. 105 was read the third time by number only," page 849. [Emphasis supplied.] Later in the same day we find in [50] Journal, page 858, that one of the members, Mr. Barnett, who had voted in favor of the bill, "gave notice of his intent to move for a reconsideration of his vote" thereon. Thereupon it was moved by another member that the rules be suspended and that the bill be reconsidered immediately, but this motion failed of passage by a vote of 13 yeas to 10 nays, a two-thirds vote being required to pass. And so the vote on the bill was not then reconsidered, House Journal page 858.

On the following day, the 57th of the session. we find a Journal entry, page 872, indicating that a message from the Senate was read transmitting the enrolled copy of Senate Bill No. 105 for the signatures of the Speaker and the Chief Clerk of the House and that the Speaker announced he had signed the enrolled copy of Senate Bill 105 and ordered the same returned to the Senate. Later in the same day, Mr. Barnett, who had theretofore given notice of his intent to ask for reconsideration of the bill, moved that it be reconsidered at that time. The Speaker ruled the motion out of order. An appeal was taken from the ruling of the chair. That ruling was put to the House and the decision of the Chair was sustained by a vote of 14 yeas to 8 nays, House Journal page 881.

On that same day, the 57th of the session, and probably before the motion to reconsider was brought up in the House, the Senate had ordered the bill to be transmitted to the Governor, Senate Journal page 678. Apparently it was so transmitted because on the 59th day of the session, in the afternoon, a message from the Governor to the President of the Senate was read to the Senate, Senate Journal pages 715, et seq. Singularly enough, the Governor's message, except for a letter from the Attorney General therein quoted, is not printed in the Senate Journal, but it [51] appears in the House Journal, page 998. Evidently the Governor returned the bill to the Senate because of the failure of the House to dispose of the motion for reconsideration before the bill was sent to the Governor, as appears by letter from Attorney General Rivers to the Governor, Senate Journal page 715, House Journal page 998. The Senate voted to return the bill to the Governor immediately, Senate Journal page 717, and it seems clear that action was taken accordingly.

The House Journal of March 27, 1947, the 60th and last day of the session, shows the reading of a message from the Governor, House Journal page 997, which is dated that day, wherein the Governor, in part, states: "I have transmitted Senate Bill No. 105 to the Office of the Secretary of Alaska for permanent filing. Senate Bill No. 105 becomes law without my signature. * * *"

The foregoing recital embraces mention of the several days of the session at which the bill in the

various stages was considered by the House and the Senate because of the provisions, hereinafter quoted, of Section 14 of the Organic Act, 48 Sec. 86 U.S.C.A., with respect to the Governor's veto power.

Is the subject of the act expressed in the title?

The mandate of our Organic Act that the subject of each legislative act must be expressed in the title may not be ignored as inconsequential or irrelevant, Territory of Alaska v. Alaska Juneau Gold Mining Company, 9 Alaska, pp. 360, 557, but the word "subject" should receive a construction that appears reasonable to literate men and women, Wickersham v. Smith, 7 Alaska 522, 543, from which the following is quoted:

"It is universally held that the title of an act which is attacked for a violation of this constitutional provision shall be construed liberally, for the purpose of upholding the law, if practicable, so as not to embarrass the Legislature by a construction unnecessary [52] to the accomplishment of the beneficial purposes for which it was enacted."

As was observed by the United States Circuit Court of Appeals for the Fifth Circuit in the case of Hidalgo & Cameron Counties Water Control v. American Rio Grande Land & Irrigation Company, 103 F. 2d, 509, 512:

"The purpose of the constitutional provision is to prevent combining several unrelated subjects into one bill to get support for it which the several subjects might not separately command; and to prevent surreptitious introduction of legislation not indicated by the title."

The Circuit Court of Appeals for the Ninth Circuit in the case of In re Boswell, 96 F. 2d, 239, has arrived at substantially the same conclusion, and in the case of Utah Power and Light Company v. Pfost, 286 U. S., 165, 187, we find the following:

"Section 16, Art. III, of the Idaho Constitution provides—'Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title.' * * * The purpose of the constitutional provision, as this court said in Posados v. Warner, B. & Co., 279 U. S. 340, 344, 'is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation. . . . the courts disregard mere verbal inaccuracies, resolve doubts in favor of validity, and hold that, in order to warrant the setting aside of enactments for failure to comply with the rule, the violation must be substantial and plain.' "

Applying the law as stated above, the "subject" of the legislation here in question is adequately expressed in the title of the Act.

The other three grounds of the alleged invalidity of the Act, namely, (a) failure to dispose of motion to reconsider in the House, in contravention of the Rules of the House; (b) veto of the bill by the Governor; and (c) failure to read the bill three times as required by the Organic Act, could each and all be disposed of speedily, and in favor of the validity of the Act, had the Governor actually signed the bill in approval thereof. Such [53] a

decision would be arrived at, and, indeed, compelled, by the controlling authority of the Supreme Court of the United States expressed in the case of Field v. Clark, 143 U. S., 649, wherein it was held that an enrolled bill signed by the Speaker of the House, and the President of the Senate, and bearing the approving signature of the President of the United States, and deposited with the Secretary of State according to law, was final and conclusive evidence of its status as a law, and was "unimpeachable," page 672, and in the case of Lyons v. Woods, 153 U. S. 649, 663, which applied the law so laid down in Field v. Clark to an act of a Territory of the United States. See also, Carlton v. Grimes, Ia. 1946, 23 NW 2d, 883, 892. The division of judicial opinion on the subject is outlined in Volume 1 of Sutherland on Statutory Construction, 3d Ed., pages 223 to 236, and in Ritzman v. Campbell, Ohio 1915, 112 NE 591, 593. However, it appears that in the Supreme Court the doctrine of Field v. Clark has not been departed from.

But in this case the enrolled bill upon its face shows that it was not signed by the Governor, nor is there anything in the enrollment to show that it became law without the Governor's approving signature. Introduced in evidence among the exhibits of the case is a certified copy of what purports to be a carbon copy of a letter dated March 27, 1947, written by the Governor to the President of the Senate, containing the declaration that "Senate Bill No. 105 becomes law without my signa-

ture," the same letter, or message, which is found in the House Journal at page 997. There is nothing in that certified copy nor in the certificate thereof to show conclusively that the Governor ever wrote or signed such a letter or that the declarations therein set out are controlling with respect to the bill mentioned. Only by [54] reference to the Journals of the House and the Senate can adequate assurance be found that the bill may have become law without the Governor's signature. Since it is necessary to refer to the Journals in an attempt to establish the validity of the Act, it obviously becomes the duty of the Court to give full examination to all of the Journal entries, to determine whether the bill was lawfully enacted. If reference must be made to the Journals at all, then that reference should be complete and comprehensive for all proper purposes, and the conclusive and "unimpeachable" presumption that the questioned legislative act is valid law, arising from the production of the enrolled bill signed by the Speaker of the House and the President of the Senate and by the Governor in approval thereof, is completely overthrown.

Instead of saying at this point, as might have been said if the Governor had signed the bill, that none of the objections to the Act, other than that involving the title, can be entertained because they are conclusively denied by the enrolled bill itself, it is thus necessary to consider and decide the three additional grounds upon which the plaintiff says the law is void.

Refusal of Vote of Reconsideration

Rule 48 of the House Rules concerning reconsideration of bills is shown in the House Journal pages 1030, 1031, as follows:

"No motion, bill, resolution or memorial shall be reconsidered on the day on which the final vote was taken, but it shall be in order, on that day, for a member, who voted on the prevailing side, to give, and have entered in the Journal, a notice of intention to move a reconsideration.

"When such notice is given any member may, on the next working day, move a reconsideration of the question. The motion for reconsideration opens for debate the question to be reconsidered and shall have precedence over every other motion except a motion to adjourn.

"No notice or reconsideration shall be in order, on the day preceding the last day of the session.

"There shall be but one reconsideration, even though the action of the House after reconsideration is opposite the action of the House before reconsideration.

"If a member gives notice that he intends to move a reconsideration, the Clerk shall not report the measure to the Senate until the reconsideration is disposed of, or the time for moving the same has expired."

It is clear that the House itself ignored the provisions of Rule 48 with respect to the enactment of Senate Bill No. 105. A member gave due notice of his intention to move for reconsideration according to Rule. On the following day as required

by the Rule he brought up the motion, but the Speaker held that the motion was out of order, apparently on the theory that the bill had already been returned to the Senate. In fact, it seems virtually certain that the Senate had already forwarded it to the Governor. Whereupon another member of the House appealed from the ruling of the Chair and upon that appeal the Chair was sustained. The action so taken brought into play the provisions of Rule 83, House Journal page 1041, which reads as follows:

"The rules of parliamentary practice comprised in Roberts' Rules of Order shall govern in all cases in which they are not inconsistent with the standing rules and orders of the House."

Consulting Roberts' Rules of Order, as we are required to do by Rule 83 above quoted, at pages 81 and 82, we find the following:

"If the decision from which an appeal is taken is of such a nature that the reversal of the ruling would not in any way affect the consideration of, or action on, the main question, then the main question does not adhere to the appeal, and its consideration is resumed as soon as the appeal is laid on the table, postponed, etc. But if the ruling affects the consideration of, or action on, the main question, then the main question adheres to the appeal, and when the latter is laid on the table, or postponed, the main question goes with it. Thus, if the appeal is from the decision that a proposed amendment is out of order and the appeal is laid on the table, it would be absurd to come to final action

on the main question and then afterwards reverse the decision of the chair and take up the amendment when there was no question to amend. The vote on an appeal may be reconsidered." [56]

Applying these provisions of Roberts' Rules of Order, we find that the House, in effect, by sustaining the decision of the Chair, did vote on the motion to reconsider.

The reluctance of courts to pronounce legislative acts void solely because of violation of legislative rules of procedure, as distinguished from controlling constitutional or statutory provisions, is noted and supporting cases cited in Volume 1 of Sutherland on Statutory Construction, pages 122 to 124, Section 601; also in Carlton v. Grimes, supra.

Rule XVIII of the Rules of the National House of Representatives provides that:

"When a motion has been made and carried or lost, it shall be in order for any member of the majority, on the same or succeeding day, to move for reconsideration thereof * * *" House Rules and Manual 77th Congress, page 374.

The notes following the printing of the rule in the House Rules and Manual show the following, based largely, if not entirely, upon Hinds' and Cannon's Precedents of the House of Representatives, pages 376, 377:

"A motion to reconsider may be entertained, although the bill or resolution to which it applies may have gone to the other House or the President, (V, 5666-5668)."

* * * *

"A bill is not considered passed or an amendment agreed to if a motion to reconsider is pending, the effect of the motion being to suspend the original proposition (V, 5704); and the Speaker declines to sign an enrolled bill until a pending motion to reconsider has been disposed of (V, 5705). But when the Congress expires leaving unacted on a motion to reconsider the vote whereby a simple resolution of the House has been agreed to, it is probable that the resolution would be operative; and where a bill has been enrolled, signed by the Speaker, and approved by the President, it is undoubtedly a law, although motion to reconsider may not have been disposed of (V, 5704, footnote)." [57]

Reference to the footnote mentioned indicates that the last clause of the above quoted text is based in part upon opinions of two Speakers of the House given after adjournment and therefore not official, and in part on the opinion of the Court in Field v. Clark, supra.

In Congress the practice is to make and dispose of motion to reconsider immediately upon passage of the bill. For example, as soon as a bill is passed, one who voted in favor of passage moves to reconsider the bill, and immediately another member, also favorable to passage, moves to lay the motion to reconsider on the table. In the House the matter may be disposed of by a statement of the Speaker as follows: "The bill is passed and without objection a motion to reconsider is laid on the table."

It follows that, under the circumstances, in the case of Senate Bill No. 105, the failure of the House to directly vote on the motion to reconsider is not fatal to the validity of the Act.

Was the Bill Vetoed by the Governor?

With respect to veto of bills passed by the Alaska Territorial Legislature, the Organic Act, Section 14, 48 Sec. 86, U.S.C.A., provides as follows:

"Except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor. Every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter, unless sooner given effect by a two-thirds vote of said legislature. If the governor does not approve such bill, he may return it, with his objections, to the legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. Upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal [58] and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become a law. If the governor neither signs nor

vetoes a bill within three days (Sundays excepted) after it is delivered to him, it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such three days. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law."

The language above quoted is entirely orthodox. Similar provisions, with variations in particulars, may be found in the Constitutions of the several States and in the Constitution of the United States. While argument has been made in favor of the asserted veto of the bill, supported by authority, State v. Sessions, Kan. 1911, 115 Pac. 641, 645, it is completely overcome by the declarations of the Governor himself above quoted and appearing at page 997 of the House Journal. In such case where the actions of the Governor are susceptible of two different constructions, his own statements on the subject must control.

Accordingly, the conclusion is that the bill was not vetoed by the Governor.

Three Separate Readings

The Organic Act, Section 13, provides that a bill in order to become a law shall have three separate readings in each House. The House Rules, Rule 65, provides that:

"The first reading shall be by title only, unless otherwise ordered by the House, * * *"

With respect to the second reading of the bill, Rule 68 shows the following:

"When the bill comes up for its second reading the Clerk shall read the bill and the report of the committee in full, section by section, and it shall then be before the House for debate and amendment." [59]

Rule 70, below quoted, gives directions as to the third reading of the bill:

"On its third reading the bill shall be read in full, section by section. The only question on the third reading of a bill shall be upon its passage and no amendment shall be entertained—but the House may at any time before the final passage of the bill, by a majority vote of all the members to which it is entitled, recommit the bill with instructions to amend."

The House Journal, page 648, recites that Senate Bill No. 105 was read the first time and referred to the Committee on Judiciary and Federal Relations with a further reference to the Committee on Labor, Capital and Immigration. The second reading of the bill is shown at page 843 of the House Journal in the following language:

"Senate Bill No. 105 was read the second time."

The pages of the Journal following page 843 show that several amendments were offered to the bill and that those amendments were voted upon and defeated. Common knowledge of legislative practice raises the inference that the amendments

were debated. Counsel for the intervenors argue that the entire bill must have been read during this debate, but nothing in the Journal so indicates.

Now, we are brought forward to the third reading and final passage of the bill. We find from the Journal, pages 848 and 849, that a member of the legislature moved for suspension of the rules that the bill "be considered re-engrossed, advanced to third reading, read by number only and placed in final passage." A vote was taken upon the proposal to suspend the rules which was carried by two-thirds majority, whereupon we find in the Journal, page 849, the following:

"Motion carried and Senate Bill No. 105 was read the third time by number only." (Emphasis supplied.) [60]

As indicated above, Rule 70 of the House Rules requires that on its third reading the bill shall be read in full, section by section. Assuming without deciding that the failure to read a bill section by section on its third reading is not fatal to its validity, we are obliged to ask whether the reading of a bill by number only is such a reading as is contemplated by Section 13 of the Organic Act. On that point no controlling decision has been found. In fact, no adjudicated case has been discovered involving the validity of the statute where one of the readings of the bill prescribed by the Constitution was by number only. It seems reasonable to assume that in passing the Organic Act and providing therein for three separate readings of bills in the Alaska Territorial Legislature, Congress

had in view its own procedure, and that procedure is that the first and third readings of the bill are invariably by title only, and in the second reading alone is the bill read at length and section by section. In fact, in the House of Representatives a practice of "Scientific Reading", as it is called, is sometimes permitted whereby, if there is no objection, a bill of considerable length is read in a startlingly brief period of time.

The decisions on the subject are not uniform. In the case of Weill v. Kenfield, 54 Cal., 18 Pac. St. Rep., 111, the Court held that reading a bill meant reading all of it. But elsewhere we find the opposite doctrine announced, in harmony with the practice of the national Congress: People ex rel Hart v. McElroy, Mich. 1888, 2 LRA 609; Central of Georgia Railway Co. v. State of Georgia, Ga. 1898, 42 LRA 518; Kentucky-Tennessee Light & Power Co. v. City of Paris, 9th Cir. 1931, 48 F. 2d, 795. Moreover, common knowledge indicates that in the Alaska Legislature the third reading of a bill until the 1947 session almost invariably [61] had been by title only. To require more without some specific controlling law or rule on the subject would be to ignore the uniform practice and to measurably abandon the authority of common sense. But what may be said of a reading of a bill by number only? In the instant case, Senate Bill No. 105, the bill had evidently been under discussion for a considerable period of time before the motion was made to suspend the rules to pass the bill. Although the bill was read the third time by num-

ber only, it seems almost certain that every member who voted on the passage of the bill knew precisely what he was voting upon. But instances may be conceived of in which a bill comes before one of the Houses of the Legislature not so debated and discussed, when to read the bill by number only would give its members no idea of the contents. In this connection we may again properly consider the provisions of the Organic Act that the subject of the bill shall be expressed in the title. Therefore, in the Alaska Legislature to read the title of a bill is indisputably to inform every member the subject of the measure which is thus brought up for vote. Neither the research of counsel nor that of the Court has been able to disclose a single case wherein the bill challenged was read by number only.

In argument it was urged upon the Court that to hold void the Act under consideration, would establish a precedent that might invalidate many other acts passed at the same session of the Legislature. A reference to the House Journal discloses that other bills were read the third time by number only. Usually it was done by unanimous consent, but that was not the case with respect to Senate Bill No. 105. The unanimous consent would, of course, completely negative any objection to the validity of the law on the ground that it had not been read properly the required [62] number of times as provided by the Rules of the House. Former Vice President Garner has been quoted as having said that the Senate could do anything—legis-

latively, of course—by unanimous consent except amend the Constitution of the United States. In any event, the effect of the decision in this case on other acts of the legislature ought not be a controlling influence in its making. Moreover, it may be finally shown that all such other acts as to which the third reading was by number only are so signed, approved and enrolled as to be "unimpeachable" under the authority of Field v. Clark, supra.

The Organic Act of Alaska is in a sense the Constitution of the Territory. Its commands must be adhered to with reasonable fidelity by the legislature as to enactment of legislation as well as in other respects. Making every allowance that ought to be made in favor of liberality of construction, no convincing reason has been offered, or even attempted, to justify the reading of a bill by number only as one of the three readings required by Section 13 of the Organic Act. Counsel for the intervenors vigorously assert that during debates in the proposal of amendments the bill must have been read several times, but that is only their conclusion. There is nothing in the Journal to show the reading of anything except the amendments, though it does seem probable that in comparing the amendments with the text of the bill as reported by the committee, the members must have been familiar with every provision of the bill. But that is not sufficient, since in this case reference must be made to the Journal and the Journal affirmatively shows that there was no third reading of the bill as required by Section 13 of the Organic Act. Failure

to read the bill the third time as required by the [63] Organic Act is fatal to its validity. For that reason only, the Act of the Alaska Territorial Legislature of the 1947 session which in the passing was known as Senate Bill No. 105 and which appears as Chapter 74 of the Session Laws of Alaska, 1947, is now held to be void and of no effect. Findings and decree may be prepared accordingly.

Dated at Anchorage, Alaska, this 28th day of June, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed June 28, 1948. [64]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Comes now the defendants and intervenors and each of them acting through their respective counsel move this Honorable Court for judgment for defendants and intervenors herein or in the alternative for a new trial in the above entitled cause upon the following grounds:

1. Accident or surprise which ordinary prudence could not have guarded against.

2. Newly discovered evidence material to the case of defendants and intervenors which could not with reasonable [65] diligence have been discovered and produced at the trial.

3. Insufficiency of the evidence to justify the decision.

4. That the decision is against law in that:

(a) A distinction is made between reading a bill by title and reading a bill by number.

(b) A distinction is made between cases where the chief executive signs a bill and cases where he permits a bill to become law without his signature.

(c) The Court failed to take judicial notice and to find as a matter of fact that Senate Bill Number 105 was passed by both Houses of the Territorial Legislature, permitted to become law by the Governor, transmitted by the Governor to the Secretary of Alaska for permanent filing, received by the Secretary of Alaska and by him permanently filed and published and proclaimed by him to be a law of the Territory of Alaska, and did fail to conclude as a matter of law that such action was final and conclusive evidence of its status as a law.

5. Error in law occurring at the trial and accepted to or to be accepted to by defendants and intervenors as set out in Number 4 above.

This motion is based upon the records and files of this cause and upon the Affidavit of J. Gerald Williams, of counsel for defendants and intervenors, with exhibits attached, filed herein.

Dated at Anchorage, Alaska, this 19th day of July, 1948.

FAULKNER & BANFIELD,
MEDLEY & HAUGLAND,
W. C. ARNOLD,
J. GERALD WILLIAMS,
Attorneys for Intervenors. [66]

RALPH J. RIVERS,
J. GERALD WILLIAMS,
Attorneys for Defendants.

(Acknowledgment of Service attached.)

[Endorsed]: Filed July 19, 1948. [67]

[Title of District Court and Cause.]

AFFIDAVIT OF J. GERALD WILLIAMS

United States of America,
Territory of Alaska—ss.

J. Gerald Williams, being first duly sworn on oath, deposes and says:

That I am an attorney at law and of counsel for defendants and intervenors in the above entitled case and participated in the preparation for trial and in the trial thereof.

1. That defendants and intervenors and counsel for defendants and intervenors were taken by surprise by the written decision filed in the above entitled cause on June 28, [68] 1948; that defendants and intervenors and their counsel had been confident that the Court, under the rule of Judicial Notice and in view of the state of the pleadings and stipulations of Counsel, would take judicial notice of the following facts:

(a) That the Honorable Ernest W. Gruening, Governor of Alaska, did on March 27, 1947, address a written communication to the President of the Territorial Senate containing the declaration that: "Senate Bill No. 105 becomes law without my signature", and did transmit a true copy of said communication of March 27, 1947, to the Secretary of Alaska, with and as a part of the enrolled copy of Senate Bill No. 105; a photostatic copy of said communication as certified by the Auditor of Alaska is hereto attached, marked Exhibit "A" and made a part hereof.

(b) That the said Ernest W. Gruening, Governor

of Alaska, did likewise on the said 27th day of March, 1947, address an identical written communication to the Speaker of the House of Representatives containing the declaration that: "Senate Bill No. 105 becomes law without my signature", as appears from the Affidavit of Ernest Gruening hereto attached marked Exhibit "B" and made a part hereof.

(c) That the said Ernest W. Gruening, Governor of Alaska, acting pursuant to the provisions of the Organic Act of Alaska, did on the 27th day of March, 1947, permit Senate Bill No. 105 (Chapter 74 of the Session Laws for 1947) to became a law of the Territory of Alaska without his signature and did transmit the engrossed and enrolled copy thereof, with a true copy of a letter to the President of the Territorial Senate stating that said bill was becoming a law without his signature, to the Honorable Lew Williams, Secretary of Alaska, for permanent filing. [69]

(d) That the Honorable Lew Williams (Secretary of Alaska, acting pursuant to law, did on or about March 27, 1947, receive from the Governor of Alaska the enrolled and engrossed copy of Senate Bill No. 105 passed by both houses of the Territorial Legislature and bearing the signatures of the President of the Territorial Senate and the Speaker of the Territorial House of Representatives and attested by the Secretary of said Senate and the Clerk of said House, respectively, together with a true copy of the communication of March 27, 1947, referred to in "a" above and did combine said documents together and permanently filed the same as

the enrolled and engrossed copy of Senate Bill No. 105 enacted into law at the Eighteenth Session of the Alaska Territorial Legislature; a photostatic copy thereof, together with the Certificate of the Secretary of Alaska attesting the correctness thereof, is hereto attached, marked Exhibit "C" and made a part hereof.

(e) That the Honorable Lew Williams, Secretary of Alaska, acting pursuant to law, did on the 23rd day of May, 1947, at Juneau, the Capitol of the Territory of Alaska, certify under the great seal of the Territory of Alaska, that certain Acts, Resolutions and Memorials, including Senate Bill No. 105 (Chapter 74 of the Session Laws of Alaska for 1947), printed under authority of Section 1935 of the Compiled Laws of Alaska, 1933, as amended, were full, true and correct copies of the original Acts, Resolutions and Memorials which were passed at the 18th Regular Session of the Alaska Territorial Legislature as shown by said original Acts, Resolutions and Memorials on file in the Office of the said Secretary of Alaska, and did publish and proclaim under the great seal of the Territory of Alaska, said Acts, Resolutions and Memorials, including Senate Bill No. 105 [70] (Chapter 74 of the Session Laws of Alaska for 1947) to be law; all as fully appears in the Authentication Certificate found on the fly leaf or third unnumbered page of the Session Laws of Alaska for 1947.

(f) That proof of the facts set forth in (a), (b), (c), (d) and (e) above would have been offered at the trial except for the fact that in view of the

stipulation of counsel filed herein and the rule of Judicial Notice Counsel for defendants and intervenors relied upon the Court taking Judicial Notice thereof.

2. That since reading and studying the Court's opinion herein, affiant and other counsel for defendants and intervenors, have, in light of the Court's reasoning and opinion, conducted further research into the actions and proceedings taken by the Governor of Alaska, Secretary of Alaska, the members of the Territorial Legislature and other Federal and Territorial officials relative to the enactment of laws at the 18th Session of the Alaska Territorial Legislature. That affiant is informed on information and belief and therefore alleges on information and belief that the Governor of the Territory of Alaska and/or the Secretary of Alaska, acting pursuant to the Organic Act of Alaska (Sections 482, 483 and 484 Compiled Laws of Alaska for 1933), did transmit true copies of Senate Bill No. 105 (Chapter 74 of the Session Laws of Alaska for 1947) to the President of the United States and to the Secretary of State for the United States, and acting on behalf of the President of the United States did transmit same to the President of the United States Senate and to the Speaker of the House of Representatives; that said copies were certified by the Secretary of the Territory of Alaska with the seal of the said Territory affixed and were by him proclaimed to be the laws of the Territory of Alaska enacted at the 18th Session of the Alaska Territorial Legislature. [71]

3. That affiant is informed and believes and therefore alleges on information and belief that the original copy of the letter of March 27, 1947, written by the Honorable Ernest W. Gruening, Governor of Alaska, and addressed to the President of the Territorial Senate and containing the declaration that: "Senate Bill No. 105 become law without my signature", and having the true signature of the Governor of Alaska affixed thereto is now in the custody of the Auditor of Alaska.

4. That the matters and things hereinabove set forth are true and if a new trial is granted, the same will be proved by competent evidence.

5. That affiant believes and has also been advised by other counsel for defendants and intervenors that upon a new trial and rehearing of argument in the above cause new authorities can be presented which will establish that the opinion of the Court, filed herein on June 28, 1948, is not supported by the evidence and is against law and was arrived at by error in law occurring at the trial.

/s/ J. GERALD WILLIAMS.

Subscribed and sworn to before me this 19th day of July, 1948.

/s/ FLORENCE E. CHAPMAN,
Notary Public for Alaska.

My Commission expires April 5, 1952.

Service of the Foregoing Affidavit by receipt of copy thereof acknowledged on this 19th day of July, 1948. Signed SMc, Attorney for the Plaintiff. [72]

EXHIBIT "A"

Territory of Alaska
Office of the Auditor
Juneau

CERTIFICATE

I, Frank A. Boyle, Auditor of the Territory of Alaska, Do Hereby Certify that the following and hereto attached is a full, true and correct copy of a letter written by Ernest Gruening, Governor of Alaska to the President of the Territorial Senate of Alaska, dated March 27th, 1947. That the 1947 Session of the Legislature of Alaska adjourned sine die on March 28th, 1947 and thereafter all the original records such as communications were deposited in the office of the Auditor of Alaska. All original Bills which became law are in the office of the Secretary of Alaska.

That the hereto attached letter from the Governor to the President of the Senate is now in my custody. That I am well acquainted with the signature of Ernest Gruening, Governor of Alaska and that the signature on the original letter of which the foregoing is a full copy, is the true and genuine signature of Ernest Gruening, Governor of the Territory of Alaska, and that he was, at the date of the letter and now is, the duly appointed and acting and qualified Governor of Alaska.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this 9th day of July, A.D. 1948.

(Seal) /s/ FRANK A. BOYLE,
Auditor of Alaska. [73]

Territory of Alaska
Office of the Governor
Juneau

March 27, 1947

President of the Senate
Eighteenth Territorial Legislature
Juneau, Alaska

Dear Mr. President:

I have transmitted Senate Bill No. 105 to the Office of the Secretary of Alaska for permanent filing. Senate Bill No. 105 becomes law without my signature. There are two reasons for this. In the first place, there is some question as to the legality of its passage. This is revealed in the following correspondence:

"President of the Senate March 26, 1947
Eighteenth Territorial Legislature
Juneau, Alaska.

Dear Mr. President:

A group of citizens visited me in my office yesterday to call my attention to what appeared to them the illegality of the passage and transmission of Senate Bill No. 105 in the House, and requested me to investigate the matter. I have done so, and upon reading the Journals, requested an opinion from the Attorney General which is herewith transmitted.

You will note that the Attorney General rules that final action had not been taken on the bill at

the time it was transmitted to me, and the present record so shows. To obviate possibility of litigation based on such irregularity, I am returning it to you so that it may again be sent to me with a new message of transmittal which should cure the matter.

Sincerely yours,

/s/ ERNEST GRUENING,
Governor of Alaska."

"Hon. Ernest Gruening March 25, 1947
Governor of Alaska
Juneau, Alaska

Dear Governor Gruening: [74]

In response to your request for an opinion as to validity of legislative procedure preceding transmittal to you yesterday of S. B. 105, please be advised:

According to the House Journal, at 10:30 p.m. March 22d, the 55th day of the 18th Session, the House suspended the rules as to S.B. 105, it was advanced to third reading and adopted by a vote of 17 yeas and 7 nays, Mr. Barnett voting on the prevailing side. Shortly thereafter the Speaker announced he had signed the bill and that it had been transmitted to the Senate. Later that night and before adjournment, Mr. Barnett gave notice of his intent to move for reconsideration of his vote on S.B. 105. A motion to force immediate reconsideration failed. Shortly thereafter the House adjourned until 10 o'clock, March 24th, the next day being

Sunday, and not a working day. Under House Rule 48, which allows the motion for reconsideration to be made on the next working day, Mr. Barnett was entitled to make his motion for reconsideration at any time during the session on Monday, March 24th, so the bill should have been recalled and kept in the possession of the House until disposition of the matter or adjournment. Such procedure is required under House Rule 48, which provides:

> 'If a member gives notice that he intends to move a reconsideration, the Clerk shall not report the measure to the Senate until the reconsideration is displosed of, or the time for moving same has expired.'

It should also be noted that the motion for reconsideration opens for debate the question to be reconsidered, which affects the rights of all the members.

Notwithstanding House Rule 48, S. B. 105 was not called back from the Senate. At 2:45 p.m. of the 24th of March the Senate sent the bill to the Governor. About 4:45 of the same day the motion for reconsideration was made by Mr. Barnett. The Speaker ruled the motion out of order, expressing reasons hereinafter noted, and was sustained by vote of the House.

The Speaker's expressed reason, when ruling the motion for reconsideration out of order, was that S. B. 105 was no longer in the House and came under the rule that only bills of a revenue or appropriation nature would be considered after the 56th day, Monday the 24th, being the 57th day.

S. B. 105, which amends the UCC law to provide an experience rating formula, grants credits to employers against the 3% UCC tax and affects revenues to the Territorial [75] Unemployment Compensation Fund to the extent of approximately a million dollars a year. The bill also shortens the waiting period for unemployed persons from two weeks to one week, which substantially affects the benefits that may be paid out of the Unemployment Compensation Fund. Therefore, S. B. 105 is a bill of a revenue nature and eligible to be considered and transmitted after the 56th day without suspending the rules.

I have reasons to believe that legal authority in the Senate agrees that S. B. 105 is a revenue measure in character and apparently many members in the House think likewise as it admitted S. B. 117 (exempting certain fishermen from liability as contributors under the UCC law) on the grounds that S. B. 117 is a revenue measure. Since both S. B. 105 and S. B. 117 amend the UCC law to reduce contributions, they are both of the same character from a revenue standpoint.

The question to be considered is whether the transmittal of S. B. 105 by the Senate to the Governor about two hours before the House took final action on the motion for reconsideration constituted a valid transmittal of a bill duly passed by both houses. It is a matter of simple logic that no bill can be validly transmitted as an enactment of both houses prior to completion of all legislative steps pertaining thereto. Therefore, in all prob-

ability, S. B. 105 in its present condition would be productive of litigation unless sent back for valid transmittal to the Governor.

Very truly yours,

/s/ RALPH J. RIVERS,
Attorney General."

The Senate, however, took the position that the proceedings were in order.

There is a second reason why I desire not to sign this bill. It will be recalled that in my message to the Eighteenth Legislature, after reviewing the Territory's pressing needs and the great variety of untapped tax sources from which revenue could easily be secured, I pointed to the example of the Unemployment Compensation tax as an illustration of how wise forethought brought dividends. I pointed out that Unemployment Compensation was established by the Territorial Legislature ten years ago in connection with the Federal government Social Security program.

After ten years, the fund had risen to a point where the tax on employers could be substantially reduced. This was a sound [76] proposal, and while this bill which puts it into effect is not by any means as good as it could be, the basic purpose which I outlined in my message has been fulfilled by it.

However, it is somewhat startling that we have passed up various forms of basic taxation which would bring in sorely needed revenue, and have adopted the one measure which would refund rev-

enue. In exchange for this handsome refund which will probably amount to one million dollars for the biennium and more in succeeding bienniums, the people of the Territory had a right to expect that industry and other hitherto untaxed activities would be willing to submit to some of the light taxation that was proposed, to take care of the Territory's pressing needs. This, however, has not been the case, and it is for the purpose of calling attention to this marked discrepancy that I am allowing Senate Bill No. 105 to become Law without my signature.

Sincerely yours,

/s/ ERNEST GRUENING,
Governor of Alaska. [77]

EXHIBIT "B"

(Copy)

United States of America,
Territory of Alaska—ss.

I, the undersigned Ernest Gruening hereby certify that I am Governor of the Territory of Alaska and that I was Governor of the Territory on March 27, 1947; and on that date I wrote a letter to the Speaker of the House of Representatives and an identical letter to the President of the Senate of the Eighteenth Territorial Legislature with reference to Senate Bill No. 105 which is now Chapter 74 of the Session Laws of Alaska 1947. That the letter is set forth in full at pages 997 to 1001 of the Journal

of the House for the year 1947 and a carbon copy of the letter is filed with the original Bill in the office of the Secretary of Alaska. That the copy as set forth in the House Journal and the copy attached to the original Senate Bill No. 105, Chapter 74 Session Laws of Alaska 1947 in the office of the Secretary of Alaska, are full, true and correct copies of the letter, and that it was signed by me as Governor of Alaska on March 27, 1947, and the signature on the original of that letter is my true and genuine signature.

/s/ ERNEST GRUENING.

Subscribed and sworn to before me this 8th day of July, 1948.

(Seal) /s/ RALPH J. RIVERS,
Notary Public for Alaska.

My Commission Expires 9/14/51. [78]

EXHIBIT "C"

Office of the Secretary for the Territory
Juneau, Alaska

United States of America,
Territory of Alaska—ss.

I, Lew M. Williams, Secretary of Alaska, Do Hereby Certify that I have compared the attached copy of Chapter 74, Session Laws of Alaska, 1947, with the original Act, Senate Bill 105, signed by the presiding officers of the House and Senate of the Eighteenth Alaska Territorial Legislature, and now on permanent file in my office, and that the within

and attached copy is a full, true and correct copy of said original Act.

I Further Certify that I have compared the attached copy of letter with carbon copy of letter, now on file in my office, dated March 27, 1947, addressed to The President of the Senate, Eighteenth Territorial Legislature, Juneau, Alaska, from Ernest Gruening, Governor of Alaska, which said carbon copy of letter accompanied Senate Bill 105, now Chapter 74 S.L.A. 1947, when said Senate Bill 105, now Chapter 74 S.L.A. 1947, was received in the office of the Secretary of Alaska for permanent filing from the Office of the Governor, and that said attached copy of letter is a full, true and correct copy of said carbon copy of letter now on file in my office.

In Witness Whereof, I have hereunto set my hand and the Seal of the Territory of Alaska this seventh day of July, A.D. 1948.

(Seal) /s/ LEW M. WILLIAMS,
Secretary of Alaska. [79]

Territory of Alaska
Office of the Governor
Juneau

President of the Senate March 27, 1947
Eighteenth Territorial Legislature
Juneau, Alaska

Dear Mr. President:

I have transmitted Senate Bill No. 105 to the Office of the Secretary of Alaska for permanent

filing. Senate Bill No. 105 becomes law without my signature. There are two reasons for this. In the first place, there is some question as to the legality of its passage. This is revealed in the following correspondence:

"President of the Senate March 26, 1947
Eighteenth Territorial Legislature

Juneau, Alaska
Dear Mr. President:

A group of citizens visited me in my office yesterday to call my attention to what appeared to them the illegality of the passage and transmission of Senate Bill No. 105 in the House, and requested me to investigate the matter. I have done so, and upon reading the Journals, requested an opinion from the Attorney General which is herewith transmitted.

You will note that the Attorney General rules that final action had not been taken on the bill at the time it was transmitted to me, and the present record so shows. To obviate possibility of litigation based on such irregularity, I am returning it to you so that it may again be sent to me with a new message of transmittal which should cure the matter.

Sincerely yours,

/s/ ERNEST GRUENING,
Governor of Alaska."

"Hon. Ernest Gruening
Governor of Alaska March 25, 1947
Juneau, Alaska

Dear Governor Gruening:

In response to your request for an opinion as to validity of legislative procedure preceding transmittal to you yesterday [80] of S. B. 105, please be advised:

According to the House Journal, at 10:30 p.m. March 22d, the 55th day of the Eighteenth Session, the House suspended the rules as to S. B. 105, it was advanced to third reading and adopted by a vote of 17 yeas and 7 nays, Mr. Barnett voting on the prevailing side. Shortly thereafter the Speaker announced he had signed the bill and that it had been transmitted to the Senate. Later that night and before adjournment, Mr. Barnett gave notice of his intent to move for reconsideration of his vote on S. B. 105. A motion to force immediate reconsideration failed. Shortly thereafter the House adjourned until 10 o'clock, March 24th, the next day being Sunday, and not a working day. Under House Rule 48, which allows the motion for reconsideration to be made on the next working day, Mr. Barnett was entitled to make his motion for reconsideration at any time during the session on Monday, March 24th, so the bill should have been recalled and kept in the possession of the House until disposition of the matter or adjournment. Such procedure is required under House Rule 48, which provides:

'If a member gives notice that he intends to

> move a reconsideration, the Clerk shall not report the measure to the Senate until the reconsideration is disposed of, or the time for moving same has expired.'

It should also be noted that the motion for reconsideration opens for debate the question to be reconsidered, which affects the rights of all members.

Notwithstanding House Rule 48, S. B. 105 was not called back from the Senate. At 2:45 p.m. of the 24th of March the Senate sent the bill to the Governor. About 4:45 of the same day the motion for reconsideration was made by Mr. Barnett. The Speaker ruled the motion out of order, expressing reasons hereinafter noted, and was sustained by vote of the House.

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S. B. 105, which amends the UCC law to provide an experience rating formula, grants credits to employers against the 3% UCC tax and affects revenues to the Territorial Unemployment Compensation Fund to the extent of approximately a million dollars a year. The bill also shortens the waiting period for unemployed persons from two weeks to one week, which substantially affects the benefits that may be paid out of the Unemployment Compensation Fund. [81] Therefore, S. B. 105 is a bill of a revenue nature and eligible to be considered

and transmitted after the 56th day without suspending the rules.

I have reason to believe that legal authority in the Senate agrees that S. B. 105 is a revenue measure in character and apparently many members in the House think likewise as it admitted S. B. 117 (exempting certain fishermen from lability as contributors under the UCC law) on the grounds that S. B. 117 is a revenue measure. Since both S. B. 105 and S. B. 117 amend the UCC law to reduce contributions, they are both of the same character from a revenue standpoint.

The question to be considered is whether the transmittal of S. B. 105 by the Senate to the Governor about two hours before the House took final action on the motion for reconsideration constituted a valid transmittal of a bill duly passed by both houses. It is a matter of simple logic that no bill can be validly transmitted as an enactment of both houses prior to completion of all legislative steps pertaining thereto. Therefore, in all probability, S. B. 105 in its present condition would be productive of litigation unless sent back for valid transmittal to the Governor.

Very truly yours,

/s/ RALPH J. RIVERS,
Attorney General."

The Senate, however, took the position that the proceedings were in order.

There is a second reason why I desire not to sign this bill. It will be recalled that in my message to the Eighteenth Legislature, after reviewing the Territory's pressing needs and the great variety of untapped tax sources from which revenue could easily be secured, I pointed to the example of the Unemployment Compensation tax as an illustration of how wise forethought brought dividends. I pointed out that Unemployment Compensation was established by the Territorial Legislature ten years ago in connection with the Federal government Social Security program.

After ten years, the fund has risen to a point where the tax on employers could be substantially reduced. This was a sound proposal, and while this bill which puts it into effect is not by any means as good as it could be, the basic purpose which I outlined in my message has been fulfilled by it.

However, it is somewhat startling that we have passed up various forms of basic taxation which would bring in sorely needed revenue, and have adopted the one measure which would refund revenue. In exchange for this handsome refund which will probably amount to one million dollars for the [82] biennium and more in succeeding bienniums, the people of the Territory had a right to expect that industry and other hitherto untaxed activities would be willing to submit to some of the light taxation that was proposed, to take care of the Territory's pressing needs. This, however, has not been the case, and it is for the purpose of calling atten-

tion to this marked discrepancy that I am allowing Senate Bill No. 105 to become law without my signature.

Sincerely yours,

ERNEST GRUENING,
Governor of Alaska. [83]

Chapter 74

In the Senate—By Committee on Judiciary and Federal Relations

SENATE BILL No. 105

In the Legislature of the Territory of Alaska
Eighteenth Session

A Bill for an Act entitled: "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date."

Be It Enacted by the Legislature of the Territory of Alaska:

Section 1. That Subsection 7(c) is hereby amended by striking out the present Section and substituting the following:

Subsection 7(c). "Experience Rating Credits."

Subsection 7(c) (1). Meaning of terms. As used in this Subsection.

(A) "Computation date" means January first (1st) of any year in which credits are being computed.

(B) "Effective date" means June thirtieth (30th) next following the computation date.

(C) "Credit year" means the four consecutive calendar quarters immediately following the effective date.

(D) "Cut-off date" means March fifteenth (15th) next following the computation date. [84]

(E) "Qualified employer" means any employer who was an employing unit and had employment for which remuneration was payable in each of the four consecutive calendar years immediately preceding the computation date and who filed any wage reports which may have been required thereon on or before the cut-off date, and has paid all contributions due on or before the effective date, provided however, that no such employer shall be deemed a qualified employer if he has had or has reported no employment for four or more consecutive calendar quarters in such four calendar years, and provided further, that when an employer or prospective employer has acquired all or substantially all the operating assets of another employing unit, the experience of both during such four calendar years shall be jointly considered for the purpose of determining and establishing the acquiring party's qualification for, and amount of, credit; and the transferring employing unit shall be divested

of its experience, and provided further that to the extent permitted by and in compliance with the requirements of Section 1602 of the Federal Internal Revenue Code, the Commission may by regulation provide for the fair and equitable allocation of experience with unemployment risk as measured by annual percentage declines in payrolls, to or among two or more employers whose operations have been transferred, joined, combined, merged or consolidated because of governmental regulations limiting a natural product, raw materials, supplies or manpower.

(F) "Payroll" means all remuneration payable for employment exclusive of remuneration in excess of three thousand dollars ($3,000.) payable by any one employing unit to an individual during any one calendar year.

(G) "Surplus" means the lesser of:

(1) That amount by which the moneys in the Unemployment Compensation Trust Fund, as of the cut-off date, exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding [85] calendar year, or

(2) An amount equal to sixty per cent (60%) of the contributions so paid for the preceding calendar year. No portion of the surplus shall be credited to any employer unless the amount of the surplus is at least ten per cent (10%) of the amount of the contributions paid on the payrolls reported by all em-

ployers on or before the cut-off date for the preceding calendar year.

Subsection 7(c) (2). Establishment of credits. The amount of credit for each qualified employer shall be established in the following manner:

(A) Qualified employers shall be grouped into six credit classes, to be designated as classes 6, 5, 4, 3, 2 and 1, in accordance with the sum of the annual percentage payroll declines in regard to the three consecutive calendar years immediately preceding the computation date, each such percentage to be obtained by dividing any decline of the payroll of a qualified employer in any calendar year from the preceding calendar year by the amount of the payroll in such preceding year, each division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

Each qualified employer shall be in the credit class which is listed below on the same horizontal line on which the sum of annual percentage payroll declines of such employer appear.

Sum of Annual Percentage Payroll Declines	Credit Class
Less than 10	6
10 or more but less than 30	5
30 or more but less than 50	4
50 or more but less than 70	3
70 or more but less than 80	2
80 or more	1

(B) A "class weight" shall be assigned to each credit class as follows:

Credit Class	Class Weight
6	6
5	5
4	4
3	3
2	2
1	0

(C) The "class product" shall be obtained by dividing the total of the payrolls for the calendar year immediately preceding the computation date for all qualified employers in the same class by the total of the payrolls of all qualified employers for such year, such division being carried out to the fourth decimal place, and multiplying the quotient by the class weight.

(D) The surplus to be credited to each class shall be the product obtained by dividing the class product for each class by the sum of the class products for all classes and multiplying the quotient by the surplus to be credited to all employers. No portion of the surplus shall be credited to credit class 1.

(E) The "class credit factor" shall be the quotient obtained by dividing that portion of the surplus assigned to any class of qualified employers by the sum of the payrolls of all employers in that class for the calendar year immediately preceding the computation date, such division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

(F) That portion of the surplus which is to be credited to any qualified employer is the product obtained by multiplying his taxable payroll in the calendar year immediately preceding the computation date by the class credit factor of his class [87]

(G) As soon as practicable after the effective date each qualified employer shall be furnished a notice showing the amount of credit to which he is entitled, if any. The amount shown on the notice may be applied only against contributions which are payable by him on wages payable in the credit year and reported not later than the day prescribed by the Commission for payment of contributions on wages payable in the last quarter of such credit year, except that when an employer or prospective employer has acquired all or substantially all of the operating assets of another employer, any unused portion of the credit of the transferring employer shall be transferred to the acquiring party, provided that the transferring employer has submitted all reports and has paid all contributions and interest due to the date of such acquisition.

The first credit notices shall be effective with the credit year beginning July 1, 1947.

(H) Corrections and Appeals:

(1) Corrections or modifications of an employer's payroll shall not be taken into account for the purpose of an increase of his credit unless such corrections or modifications were established on or before the cut-off date.

(2) Corrections or modifications of an employer's payroll may be taken into account within three years after the cut-off date, for the purpose of a reduction of his credit.

(3) Within one year from the effective date the Commission may reconsider the credit allowed any employer whenever it finds that there has been an error in the computation thereof. When an increase is due, it shall issue to such employer a supplementary credit notice reflecting [88] the increase in the employer's credit; however, when a credit notice has been issued to an employer whose credit is reduced, such notice shall be recalled and a revised notice issued. If the credit shown by the incorrect notice has already been applied in payment of contributions in excess of the correct credit, the employer shall thereupon become liable for payment into the fund of an amount equal to the excess of the credit taken by him over the credit to which he is entitled and such amount shall be deemed and collected as contributions payable under this act.

(4) Increases or reductions of an employer's credit shall not affect the credits established or to be established for any other employer, and shall further not affect any other computation made under this Subsection.

(5) Any employer dissatisfied with the amount of credit shown on his credit notice may file a request for adjustment with the Commission within thirty (30) days of the mailing of such credit notice to an employer, showing wherein the amount of credit

may be in error. Should such request for adjustment be denied, the employer, within ten (10) days of the mailing of such notice of denial of adjustment, may file with the Appeal Tribunal a petition for hearing which shall be heard in the same manner as a petition for a denial of refund. The appellate procedure prescribed by this Act for further appeal shall apply to all denials of adjustment.

Section 2. That Chapter 4, Section 4(d), Extraordinary Session Laws of Alaska, 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, as amended by Chapter 40, Session Laws of Alaska, 1941, as amended by Chapter 32, Section 3, Extraordinary Session Laws of 1945, be amended to read as follows: [89]

Subsection 4(d). He has been unemployed for a waiting period of one week. No work shall be counted as a week of unemployment for the purpose of this subsection:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was elegible for benefits in all respects, except for the requirements of

this subsection, of subsection (d) of section 3 and of subsection (e) of section 5.

Section 3. Effective Date. This Act shall become effective June 30, 1947.

Passed by the Senate March 13, 1947.

/s/ ANDREW NERLAND,
President of the Senate.

Attest:

/s/ JESTA M. MITCHELL,
Secretary of the Senate.

Passed by the House March 22, 1947.

/s/ O. S. GILL,
Speaker of the House.

Attest:

/s/ WM. L. PAUL,
Chief Clerk of the House.

Approved by the Governor....., 1947.

.....
Governor of Alaska.

[Endorsed]: Filed July 19, 1948. [90]

MINUTES OF PROCEEDINGS

August 5, 1948

Permitting Admission of Associate Counsel for Trial of Cause

Now at this time upon motion of J. Gerald Williams, of counsel for intervenors,

It Is Ordered that Herbert W. Haugland, a member of the Bar of the State of Washington, be, and he is hereby, admitted to practice before this Court for the hearing of cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon, et al, defendants, and United States Smelting, Refining and Mining Company et al, intervenors.

Entered Court Journal No. G 17, Page No. 138, Aug. 5, 1948. [91]

HEARING ON MOTION FOR NEW TRIAL

Now at this time hearing on motion for new trial in cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon, et al, defendants, and United States Smelting, Refining and Mining Company, et al, intervenors, came on regularly before the Court, the plaintiff not being present but represented by Stanley J. McCutcheon, of his counsel, the defendants not being present but represented by Ralph J. Rivers, Attorney General for Alaska, of their counsel, the intervenors not being present but represented by Herbert W. Haugland, W. C. Arnold and J. Gerald Williams, of their counsel. The following proceedings were had, to-wit:

At this time Ralph J. Rivers, of counsel for defendants, moves the Court for permission to re-open defendants case to permit the introduction of new evidence and upon stipulation by and between respective counsel the case is re-opened for introduction of new evidence by all parties.

A letter, dated July 29, 1948, signed by Frank A. Boyle, Auditor of Alaska, with a photostatic copy of a letter dated March 27, 1947, signed by Ernest Gruening, Governor of Alaska, addressed to the President of the Senate, Juneau, Alaska, was duly offered, marked and admitted as defendants exhibit "A".

Entered Court Journal No. G 17, Page No. 138, Aug. 5, 1948. [92]

An affidavit of Ernest Gruening, Governor of Alaska, dated July 8, 1948 in re letter of March 27, 1947 addressed to the Speaker of the House of Representatives, was duly offered, marked and admitted as defendants exhibit "B".

Argument to the Court was had by W. C. Arnold, for and in behalf of the intervenors.

At 10:35 o'clock a.m. Court continued cause to 10:45 o'clock a.m. [93]

Now came the respective counsel as heretofore and the hearing on motion for new trial in cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon, et al, defendants, and United States Smelting, Refining and Mining Company, et al, intervenors, was resumed.

Argument to the Court was resumed by W. C. Arnold, for and in behalf of the intervenors.

Argument to the Court was had by Herbert W. Haugland, for and in behalf of the intervenors.

Argument to the Court was had by J. Gerald Williams for and in behalf of the intervenors.

Argument to the Court was had by Stanley J. McCutcheon, for and in behalf of the plaintiff.

At this time Stanley J. McCutcheon, of counsel for plaintiff announces that plaintiff does not desire to offer any more evidence and rests; counsel for defendants and intervenors announce that they do not desire to offer any more evidence and rest.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, announced it would reserve its decision in this cause and defendants and intervenors allowed ten days within which to file briefs, and plaintiff allowed ten days additional time within which to file reply briefs.

Entered Court Journal No. G 17, Page No. 139, Aug. 5, 1948. [94]

September 10, 1948.

RENDERING ORAL DECISION

Now at this time the plaintiff not being present but represented by Stanley J. McCutcheon, of his counsel, the defendant not being present but represented by J. Gerald Williams, of their counsel, the intervenors not being present but represented by J. Gerald Williams, of their counsel and the court

having heretofore and on the 5th day of August, 1948, heard the arguments of respective counsel in cause No. A-4597, entitled Felton H. Griffin, plaintiff, versus R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska, et al, defendants, and having reserved its decision,

Whereupon the Court now renders oral decision finding for the plaintiff and against the defendants and denies motion for judgment for defendants and for new trial.

Entered Court Journal No. G 17, Page No. 172, Sept. 10, 1948. [95]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial on the 20th day of April, 1948, at the hour of 10:00 o'clock a.m. in the Courtroom of the above-entitled Court at Anchorage, Alaska, on plaintiff's complaint, praying judgment as follows:

1. That defendants and each of them be enjoined and restrained from issuing credit notices or otherwise establishing credit for employers against sums due and owing or to become due and owing under the Alaska Unemployment Compensation Law.

2. That the Court find and declare Chapter 74

of the Session Laws of Alaska for 1947 entitled, "An Act to Amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) providing for and establishing an Experience Rating for Territorial Employers under [96] the Alaska Unemployment Compensation Law and amending subsection 4(d) and to declare an effective date", null and void and of no force and effect.

Plaintiff having been represented by his Counsel, Stanley J. McCutcheon, Esq., and Buell A. Nesbett, Esq., of the firm of McCutcheon & Nesbett of Anchorage, Alaska, the defendants being represented by J. Gerald Williams, Esq., as associate Counsel appearing for Ralph Rivers, Esq., the Honorable Attorney General of Alaska, and the Intervenors being represented by J. Gerald Williams, H. L. Faulkner, Esq., of the firm of Faulkner & Banfield of Juneau, Alaska, and Edward F. Medley, Esq., of the firm of Medley & Haugland of Seattle, Washington.

These parties having announced readiness for trial and opening statements having been made, plaintiff called as his first and only witness, the Honorable Lew M. Williams, Secretary of Alaska. Plaintiff rested and defendants and intervenors having called no witnesses, introduced several exhibits and rested.

The Court having heard the concluding arguments of Counsel for all parties, took the matter

under advisement and subsequently rendered an opinion on the 28th day of June, 1948.

The defendants and intervenors having seasonably moved the Court thereafter for a reconsideration and the matter then coming before the Court regularly on its calendar on the 5th day of August, 1948, and at said time the plaintiff was represented before said Court by his attorneys, Stanley J. McCutcheon, Esq., and Buell A. Nesbett, Esq.; the defendants being represented by Ralph Rivers, Esq., Attorney General of Alaska, and the intervenors being represented by J. Gerald Williams, Esq., of Anchorage, Alaska, and W. C. Arnold, Esq., and H. W. Haugland, Esq. of Counsel of record, both of Seattle, Washington, and the parties having announced themselves as ready for trial, the Court thereupon, upon motion of the defendants, after consideration, reopened the case for the introduction of further evidence by all parties.

Thereupon the defendants and intervenors introduced further documentary evidence and stipulations and rested and the plaintiff rested. At the conclusion of said hearing on August 5, 1948, the Court, after [97] hearing the arguments of Counsel, took said matter under advisement and on September 10, 1948, having considered the proof and evidence in said cause, the arguments and briefs of Counsel, rendered its oral opinion to the effect that it denied the motion of the defendants and intervenors for judgment notwithstanding its Memorandum Opinion, and for new trial, and that it held in favor of the plaintiff in accordance with

its written opinion signed June 28, 1948, as the law in this case, and said Court does now in accordance therewith, make and enter the following:

FINDINGS OF FACT

1. That the plaintiff, Felton H. Griffin, is a citizen and taxpayer of the Territory of Alaska.

2. That the defendant R. E. Sheldon, is now and at all times mentioned has been the executive director of the Unemployment Compensation Commission of Alaska, and as such Executive Director is charged with the duties of administering the Alaska Unemployment Compensation Law; that he is a citizen of the Territory of Alaska. residing at Juneau, Alaska; that defendants Ernest F. Jessen, Anthony Zorich and George Vaara are each resident citizens of the Territory of Alaska, and these persons constitute the Unemployment Compensation Commission of Alaska.

3. That each of the corporate intervenors are corporations regularly qualified to do business within the Territory of Alaska and each of the individual intervenors are citizens and residents of Alaska and all of said intervenors are employers affected by the Unemployment Compensation Laws and each has a substantial interest in the matter in litigation.

4. That the Thirteenth Legislature for the Territory of Alaska in extraordinary session assembled during the year 1937, passed an Act entitled, "An Act to provide for Unemployment Compensation; to provide for the Establishment of Public Em-

ployment offices; to provide funds therefor; to create a Commission to administer the act; and to define its duties; to provide for its appointment; to provide for cooperation with the United States of America in the Administration of the Act; to provide penalties for violations; to provide for an appropriation to carry the [98] act into effect; and to declare an emergency." Said act provided in Section 1 as follows: "This Act shall be known and may be cited as the Alaska Unemployment Compensation Law."

5. That the Eighteenth Legislature for the Territory of Alaska in regular session assembled during the year 1947, purported to have passed an Act, amending the Alaska Unemployment Compensation Law; that the title of said purported amendment was as follows: "An Act to amend Chapter 4 of the Extraordinary Session Laws of Alaska, 1937, as amended by Chapter 1 and Chapter 51, Session Laws of Alaska, 1939, as amended by Section 20, Chapter 40, Session Laws, 1941, by amending Subsection 7(c) providing for and establishing an Experience Rating for Territorial Employers under the Alaska Unemployment Compensation Law and amending Subsection 4(d) and to declare an effective date."

6. That the said purported amendment provided in Subsection 7(c)(2), et seq., thereof for the establishment of a system of "Credit" for so-called "Qualified Employers", which said "Credit" under an involved and complicated mathematical formula set out in the said amendment, could result

in a "Surplus", so-called, in favor of employers within so-called "Credit Classes", resulting in "Credit Notices" being given to employers qualified under the said amendment, said "Credit Notices" to be applied to reduce future Unemployment Compensation payments made by the employers qualifying thereunder.

7. That the effect of the so-called "Experience Rating" amendment to the Alaska Unemployment Compensation Act would be to reduce payments to the Alaska Unemployment Compensation fund for the fiscal year commencing July 1. 1947, by employers qualifying under said purported amendment.

8. That the Unemployment Compensation Act of Alaska together with amendments and purported amendments thereto bears an intimate relation to the economic well being of the Territory of Alaska.

9. That the said Experience Rating amendment, known as Senate Bill No. 105, was introduced in the Senate of the Alaska Territorial Legislature at the 1947 Session of that body, was considered and passed in due course by the Senate. Said Bill then came into the House of Representatives on the 47th day of Session, was read the first time and referred to appropriate committee. On the 50th day of the Session, the committee reported the bill back [99] to the House, recommending enactment. On the 55th day of the Session, the measure was brought up in the House of Representatives for consideration and read the second time, whereupon numerous amendments to the bill were

offered and voted upon. At the conclusion of all amendments in said House Journal, is found the following: "It was moved by Mrs. Engstrom, seconded by Mr. D. Anderson, that the rules be suspended as to Senate Bill No. 105, that it be considered re-engrossed, advanced to third reading, read by number only and placed in final passage." A vote was thereupon taken and the rules suspended and the bill passed by a vote of 16 yeas and 8 nays.

The Journal further recites that, "Senate Bill No. 105 was read the third time by number only." Later in the same day, as shown by the Journal, one of the members, Mr. Barnett, voting in favor of the bill, "gave notice of his intent to move for a reconsideration of his vote" thereon. It was thereupon moved by another member that the rules be suspended and that the bill be reconsidered immediately, but this motion failed of passage by a vote of 13 yeas to 10 nays.

That on the 57th day of said session is found a Journal entry, indicating that a message from the Senate was read, transmitting the enrolled copy of Senate Bill No. 105 for the signature of the speaker and the chief clerk of the house. It is further found that the Speaker announced he had signed the enrolled copy of Senate Bill No. 105 and ordered the same returned to the Senate. It is found that later in the day, Mr. Barnett, who had theretofore given notice of his intent to ask for reconsideration of the bill, moved that it be reconsidered at that time. The Speaker ruled the motion

out of order. An appeal was taken from the ruling of the Chair. The ruling was put to the House and the decision of the Chair was sustained by a vote of 14 yeas to 8 nays. It is found that on the same day, the 57th day of the Session, the Senate ordered the bill to be transmitted to the Governor. That on the 59th day of the said Session in the afternoon a message from the Governor to the President of the Senate was read to the Senate. [100] That the Governor returned the bill to the Senate. That the Senate voted to return the bill to the Governor immediately thereafter.

That the House Journal of March 27, 1947, the 60th and last day of the Session, shows the reading of a message from the Governor, which is dated that day, wherein the Governor states: "I have transmitted Senate Bill No. 105 to the Office of the Secretary of Alaska for permanent filing. Senate Bill No. 105 becomes law without my signature."

That an unsigned carbon copy of said letter of the Governor of Alaska was at the same time transmitted by the Governor with said original Senate Bill 105 to the Secretary of Alaska and was received by the Secretary of Alaska on March 27, 1947 and was the only letter of transmittal accompanying said Bill; that the said carbon copy of the said letter of the Governor of Alaska was attached to said Bill and was filed as a part of the records of permanent filing of said Bill in the office of the Secretary of Alaska; that the said office of the Secretary of Alaska is the repository for per-

manent filing of enacted bills of the Territory of Alaska; that the Secretary of Alaska accepted the said letter of transmittal and thereupon published and printed said Senate Bill 105 as a part of the Session Laws of the Territory of Alaska and appended to the bound volume his certificate of official authentication.

That the original letter, herein referred to, of the said Governor of Alaska was regularly transmitted by the President of the Senate of Alaska to the Auditor of the Territory of Alaska and that the said original letter reposes in the custody of the said Auditor of Alaska and is part of the permanent files of said office.

That by reason of the fact that the letter of transmittal of Senate Bill 105 from the Governor of Alaska to the Secretary of Alaska [101] for permanent filing is an unsigned carbon copy of said original letter of the Governor dated March 27, 1947, it became necessary for the Trial Court in this case to refer to the Legislative journals, together with other in addition to proof that to be found in the office of the Secretary of Alaska in order to determine the validity of said Senate Bill 105.

10. That on April 1, 1948 counsel of record for all of the parties to the action entered into and signed a written stipulation, filed in Court on April 5, 1948, which stipulation in part reads as follows:

"It Is Hereby Stipulated and Agreed By and Between Plaintiff, Defendants and Intervenors through their respective counsel that upon the trial

of the above entitled cause there may be introduced in evidence by either the Plaintiff, the Defendants or the Intervenors, the bound printed volumes of the House and Senate Journals of the Alaska Legislature for the year 1947, Eighteenth Session, for the convenience of the Court in referring to the pertinent parts of the Journals involved in the above entitled cause, and that those printed copies of the Journals may be received as authentic and true copies of the proceedings in the Eighteenth Alaska Legislature."

11. That the Governor of Alaska refused to sign said Experience Rating Amendment and has not signed the same.

12. That the Eighteenth Territorial Legislature for the Territory of Alaska adjourned sine die on the 27th day of March, 1947.

And from the foregoing findings of fact, the Court does now make and enter the following

CONCLUSIONS OF LAW

1. That the "subject" of the legislation known as Senate Bill No. 105 is adequately expressed in the title of the Act.

2. That the Governor of Alaska did not veto said Senate Bill No. 105.

3. That the motion to reconsider Senate Bill No. 105 in the House of Representatives did not invalidate said Act.

4. That Chapter 74 of the Session Laws of Alaska, 1947, known as Senate Bill No. 105 did not become law because of failure of the House of

Representatives to comply with the Organic Act of Alaska, requiring three separate readings. [102]

5. That a permanent injunction should be entered herein, restraining the defendants and each of them from issuing credit notices or otherwise establishing credits for employers against the sums due or to become due under the Alaska Unemployment Compensation Law as provided by Chapter 74 of the Session Laws of Alaska, 1947, as prayed for in plaintiff's complaint.

Done in open Court at Anchorage, Alaska, this 7th day of October, 1948.

ANTHONY DIMOND,
District Judge.

Presented by:

S. McCUTCHEON,
McCUTCHEON & NESBETT,
Attorneys for Plaintiff.

Copy received:

RALPH RIVERS,
J. GERALD WILLIAMS.
Attorneys for Defendants.
By H. W. HAUGLAND.

Copy received:

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,
Attorneys for Intervenors.
By H. W. HAUGLAND.

[Endorsed]: Filed Oct. 7, 1948. [103]

In the District Court for the Territory of Alaska, Third Division

No. A-4597 Civil

FELTON H. GRIFFIN,

Plaintiff,

vs.

R. E. SHELDON as Executive Director, Unemployment Compensation Commission of Alaska: ERNEST F. JESSEN, ANTHONY ZORICH, and GEORGE VAARA as the Unemployment Compensation Commission of Alaska,

Defendants,

UNITED STATES SMELTING, REFINING & MINING COMPANY, a corporation; ALASKA LAUNDRY, INC., a corporation; PACIFIC AMERICAN FISHERIES, INC., a corporation; HEALY RIVER COAL CORPORATION, a corporation; JUNEAU SPRUCE CORPORATION, a corporation; KETCHIKAN SPRUCE MILLS, a corporation; WESTERN FISHERIES COMPANY, a corporation; WELLS ALASKA MOTORS, a copartnership; and JOE COBLE, d/b/a THE PIONEER CAB COMPANY, and all others similarly situated,

Intervenors.

DECREE

Be It Remembered, that on the 20th day of April, 1948, at the hour of 10 o'clock a.m. the above entitled cause came on regularly for hearing

on the merits on the plaintiff's petition for an injunction before the Honorable Anthony J. Dimond, Judge of the above entitled Court. All parties were represented by counsel and announced readiness for trial. Thereafter, the parties presented to the Court testimony and stipulations after which the Court heard arguments by the attorneys for the respective parties. Thereafter. the Court, having filed a Memorandum Opinion, and motions for reconsideration having been seasonably filed by the defendants and intervenors, the matter having come regularly before Court on its calendar on the 5th day of August, 1948, at the hour of 10 o'clock a.m. and all parties being again represented in Court by their counsel of record and the Court having regularly re-opened the case for the [104] introduction of further testimony and testimony having been introduced after which the Court heard arguments by the attorneys for the respective parties and thereafter the said Court on September 10, 1948, at the hour of 2 o'clock p.m. having announced by oral opinion its decision re-affirming the written opinion of June 28, 1948, and the Court being fully advised in the premises, having made, filed and entered herein its Findings of Fact and Conclusions of Law, now therefore by virtue of the law and the premises,

It Is Hereby Ordered, Adjudged and Decreed that Chapter 74, Session Laws of Alaska, 1947, be and the same is hereby declared to be null and void and of no force and effect whatsoever, and

It Is Further Ordered, Adjudged and Decreed

that R. E. Sheldon as Executive Director and Ernest F. Jessen, Anthony Zorich and George Vaara, as the Unemployment Compensation Commission of Alaska, be and they are hereby restrained from giving or granting any credit or credits of any kind or nature to any employer of the Territory of Alaska, including the Intervenors, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry, Inc., a corporation; Pacific American Fisheries, Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation, a corporation; Ketchikan Spruce Mills, a corporation; Western Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership; and Joe Coble, d/b/a The Pioneer Cab Company, and all others similarly situated and each of them, as provided in the provisions of Chapter 74, Session Laws of Alaska, 1947, or otherwise proceeding in any manner thereunder.

To all of the Decree and Order the defendants and intervenors except and their exceptions are hereby allowed.

Done in open Court at Anchorage, Alaska, this 7th [105] day of October, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

Presented by:

STANLEY McCUTCHEON,
McCUTCHEON & NESBETT,
Attorneys for Plaintiff.

Approved as to form:

RALPH RIVERS,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Defendants.

Approved as to form:

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER.
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

Entered Court Journal No. G-17, Page No. 227, Oct. 7, 1948.

[Endorsed]: Filed Oct. 7, 1948. [106]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR JUDGMENT OR FOR NEW TRIAL

This matter coming regularly before the court for entry of order and the court having heretofore on September 10, 1948 in open court announced its ruling denying defendants and intervenors motion for judgment or in the alternative for new trial and the parties having approved the form of this order and the court being fully advised does here and now

Order, Adjudge and Decree that the motion of

the defendants and intervenors for judgment or in the alternative for new trial be and the same is hereby denied to which order the defendants and the intervenors except and their exception is hereby allowed.

Done in open Court at Anchorage, Alaska, this 7th day of October, 1948.

ANTHONY DIMOND,
District Judge. [107]

Approved as to form:

BUELL A. NESBETT,
McCUTCHEON & NESBETT,
Attorneys for Plaintiff.

RALPH RIVERS,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

Entered Court Journal No. G-17, Page No. 228, Oct. 17, 1948.

[Endorsed]: Filed Oct. 7, 1948. [108]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The above named defendants, R. E. Sheldon as Executive Director, Unemployment Compensation Commission of Alaska, Ernest F. Jessen, Anthony Zorich, and George Vaara as the Unemployment Compensation Commission of Alaska, and each of them, and the intervenors, United States Smelting, Refining and Mining Company, a corporation, Alaska Laundry, Inc., a corporation, Pacific American Fisheries, Inc., a corporation, Healy River Coal Corporation, a corporation, Juneau Spruce Corporation, a corporation; Western Fisheries Company, a corporation; Wells Alaska Motors, a co-partnership, and Joe Coble, d/b/a The Pioneer Cab Company, and all others similarly situated, and each of them, considering themselves aggrieved by the Order, Judgment and Decree made and entered in the above entitled action on the 7th day of October, 1948, in favor of the above [109] named plaintiff and against the said defendants wherein it was ordered and adjudged that the issues joined in said cause are found in favor of the plaintiff and against the defendants and the intervenors and an injunction was ordered enjoining the defendants above named from issuing credit or credits of any kind or nature to any employer of the Territory of Alaska, including the intervenors and each of them, as provided in Chapter 74 of the Session Laws of Alaska, 1947, do hereby appeal from said Order, Judgment and Decree, and the

whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified and set forth in the Assignment of Errors which is filed herewith, and the defendants and intervenors pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which the said Order, Judgment and Decree were made, duly authenticated by the Clerk of this Court, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California;

And the defendants above named, and each of them, respectfully represent that this suit has been brought against them in their official capacity as the Unemployment Compensation Commission of Alaska to restrain them from enforcing a law adopted by the Legislature of the Territory of Alaska and that this appeal is directed by the Attorney General of Alaska and that hence no appeal bond or other bond shall be required in this cause.

Dated at Anchorage, Alaska. this 7th day of October, 1948.

RALPH RIVERS,
Attorney General of Alaska.

RALPH RIVERS,
J. GERALD WILLIAMS,

By H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed Oct. 7, 1948. [110]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now the above named defendants and intervenors and allege that the Findings, Conclusions and Decree of the above entitled court entered in the above entitled cause on the 7th day of October, 1948, are erroneous and unjust to them, and file with this petition for allowance of appeal the following assignment of errors on which they will rely, to-wit:

I.

The Court erred in finding that Felton H. Griffin, plaintiff, is a citizen and taxpayer of the Territory of Alaska.

II.

That the Court committed error in examining and considering the Journal of the House of Representatives of the Territory of Alaska for the purpose of determining the validity of Senate Bill 105 [111] which was adopted by the said Legislature and in failing to give judicial notice and

weight to the said Bill after it had become duly enrolled, printed and published as Chapter 74 of the Session Laws of Alaska, 1947.

III.

That the Court committed error in determining that it became necessary to refer to the Legislative Journals by reason of the fact that a carbon copy of the letter from the Governor of Alaska accompanied Senate Bill 105 when it was transmitted to the Secretary of Alaska for permanent filing.

IV.

That the Court erred in entering a Conclusion of Law that the plaintiff as a citizen and taxpayer of Alaska is entitled to bring and maintain this suit.

V.

That the Court erred in its Conclusions of Law that Chapter 74 of the Session Laws of Alaska, 1947, was invalid because it failed to have three readings in the House of Representatives.

VI.

That the Court erred in its Conclusion that a decree should be entered in favor of the plaintiff and that an injunction should be granted.

VII.

That the Court erred in giving and entering a Decree in favor of the plaintiff and against the defendants permanently enjoining the defendants as the Unemployment Compensation Commission and Director thereof from granting or giving credits to the intervenors and all other employers of Alaska as provided in Chapter 74 of the Session

Laws of Alaska, 1947, and that the said Decree should have been for dismissal.

VIII.

That the Court erred in entering an Order denying the defendants and intervenors Motion for Judgment or in the Alternative for a new trial.

Wherefore, defendants and intervenors pray that said Decree, the Findings and Conclusions in support thereof, be set aside and the injunction dismissed in furtherance of justice and in accordance with law.

Dated at Anchorage, Alaska, this 7th day of October, 1948.

RALPH RIVERS,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed Oct. 7, 1948. [113]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

This matter coming regularly before the Court on this 7th day of October, 1948, to be heard upon the petition of the defendants and intervenors above named for the allowance of an appeal in behalf of said defendants and intervenors from the Findings of Fact, Conclusions of Law and Order and Decree entered in said cause on the 7th day of October, 1948, and whereas the defendants and each of them are the authorized agents of the Government of the Territory of Alaska and no cost bond is required of the said defendants,

Now, therefore, it is Ordered that the appeal of the said defendants and the intervenors from the Order, Judgment and Decree entered herein on October 7th, 1948, be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit and that a certified copy of the transcript of record, proceedings, [114] orders, and all other proceedings in said matter on which said Order, Judgment and Decree appealed from is based, be transferred, duly authenticated, to the United States Circuit Court of Appeals for the Ninth Circuit and therein filed and said cause docketed on or before forty (40) days from this date to be heard at San Francisco, California, or such other place within the Ninth Circuit as may be designated.

It is further Ordered that the defendants herein are not required to file a bond and that the in-

Territory of Alaska, Division Number Three, in the above entitled matter is hereby acknowledged and accepted:

Petition for Allowance of Appeal.

Assignment of Errors.

Order Allowing Appeal and Granting Supersedeas.

Citation on adverse party.

Copy of Cost Bond.

Dated at Anchorage, Alaska, this 7th day of October, 1948.

S. McCUTCHEON,
Counsel for Plaintiff and Appellee.

[Endorsed]: Filed Oct. 8, 1948. [118]

United States Fidelity and Guaranty Company
Baltimore, Maryland

No. A-4597 $250.00

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That we, United States Smelting, Refining and Mining Company, a corporation; Alaska Laundry, Inc., a corporation; Pacific American Fisheries, Inc., a corporation; Healy River Coal Corporation, a corporation; Juneau Spruce Corporation, a corporation; Ketchikan Spruce Mills, a corporation; Western Fisheries Company, a corporation;

Wells Alaska Motors, a co-partnership; and Joe Coble, d/b/a The Pioneer Cab Company, and all others similarly situated, the Intervenors above named, as Principal, and United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact surety business in the Territory of Alaska, Baltimore, Maryland, as Surety, are held and firmly bound unto Felton H. Griffin, plaintiff, in the full sum of Two Hundred Fifty and No 100 Dollars ($250.00), to be paid to the said Felton H. Griffin, plaintiff, his heirs, executors, administrators, successors or assigns, to which payment well and truly be made, we bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally by these presents. [119]

Sealed with our seals and dated this 6th day of October, 1948.

Whereas, on the 6th day of October, 1948, in a suit pending in the District Court for the Territory of Alaska, Third Division, between Felton H. Griffin, plaintiff, and the defendants above named, and the intervenors above named, a judgment was rendered in favor of the said Felton H. Griffin, plaintiff, and against the said defendants and intervenors, and the said named defendants and intervenors have petitioned for and been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a citation has been issued and directed to the said Felton H. Griffin, citing him to appear in said Court at San Francisco, California, thirty (30) days from and after the date of said citation.

Now, Therefore, the Condition of the Above Obligation is Such, that if the said Defendants and Intervenors above named shall prosecute their appeal to effect an answer all costs, if the appeal is dismissed or by judgment affirmed, or all such costs as the appellate court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

UNITED STATES SMELTING, REFINING AND MINING COMPANY, a corporation; ALASKA LAUNDRY, INC., a corporation; PACIFIC AMERICAN FISHERIES, INC., a corporation; HEALY RIVER COAL CORPORATION, a corporation; JUNEAU SPRUCE CORPORATION, a corporation; KETCHIKAN SPRUCE MILLS, a corporation; WESTERN FISHERIES COMPANY, a corporation; WELLS ALASKA MOTORS, a co-partnership; and JOE COBLE d/b/a The Pioneer Cab Company, and all others similarly situated, the Intervenors,

By H. W. HAUGLAND,

One of Attorneys for Principal.

UNITED STATES FIDELITY AND GUARANTY COMPANY SURETY,

By GRACE M. McCONNELL,

Attorney-in-Fact.

(Corporate Seal.)

Approved October 7, 1948.

/s/ ANTHONY J. DIMOND,

District Judge.

[Endorsed]: Filed Oct. 7, 1948. [120]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

This cause coming on for hearing in equity before the Honorable Anthony J. Dimond, Judge of the above entitled court, at a regular session of the court held at Anchorage, Alaska, in the Third Judicial Division of said Territory, on the 20th day of April, 1948; the plaintiff was represented by his attorneys, McCutcheon and Nesbett and the defendants were represented by J. Gerald Williams as associate counsel for Ralph J. Rivers, Attorney General of Alaska and the intervenors were represented by their attorneys of record, H. L. Faulkner of Juneau, Alaska, and Edward F. Medley, of Seattle, Washington.

Whereupon, the parties respectively offered and introduced the following evidence and exhibits of evidence, and the following rulings of the Court were entered, all as follows, to-wit: [121]

TRANSCRIPT OF PROCEEDINGS

On Tuesday, April 20, 1948, the above-entitled matter came on regularly for trial in open court before the Honorable Anthony J. Dimond, United States District Judge. The following comprises certain excerpts of the proceedings had at that time.

McCutcheon and Nesbett of Anchorage, Alaska, appeared as attorneys for the plaintiff.

Mr. J. Gerald Williams of Anchorage, Alaska, appeared as associate counsel for the defendants, appearing for Honorable Ralph Rivers, Attorney General of Alaska.

Mr. H. L. Faulkner of Juneau, Alaska, and Mr. Edward F. Medley, of Seattle, Washington, appeared as attorneys for the intervenors.

Court: This is the day set for trial of the case of Felton H. Griffin, Plaintiff, vs. R. E. Sheldon and another. Is the plaintiff ready for trial? [122]

Mr. McCutcheon: The plaintiffs are ready.

Court: Are the defendants ready?

Mr. Williams: The defendants are ready, your Honor.

Court: I have read most of the papers that appear in the file including the amended complaint and several answers, motions for leave to intervene, also a memorandum brief of the Attorney General, Mr. Rivers; also the stipulation with respect to proof. Is it contemplated that any oral testimony will be offered on behalf of the plaintiff?

Mr. McCutcheon: The plaintiff will put only one witness on the stand for just one moment, your Honor.

Court: Do the defendants anticipate they will wish to offer oral testimony?

Mr. Faulkner: Your Honor, I think not. We have stipulations there. We may use the Journals in their entirety in preference to picking out separate pages. There is just one other thing we would like to present now: We have alleged the intervenors are employers of labor and that has been denied, I think perhaps inadvertently, by the plaintiff. If the plaintiff admits that we would have no testimony. If the plaintiff denies it, of course, we would have to prove it by Mr. Sheldon or some other witness.

Mr. McCutcheon: We will admit it, your Honor. Let the record show.

Court: Is that admission satisfactory? [123]

Mr. Faulkner: Yes.

Opening statement to the Court was then had by Mr. Stanley J. McCutcheon for and in behalf of the plaintiff.

Opening statement to the Court was had by Mr. H. L. Faulkner for and in behalf of the defendants.

Court: Very well. If there is any testimony to be adduced counsel may proceed.

Mr. McCutcheon: Call the Honorable Lew Williams.

HONORABLE LEW M. WILLIAMS

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. McCutcheon:

Q. Will you kindly state your name, sir?

A. Lew M. Williams.

Q. And what is your official capacity?

A. Secretary of Alaska.

Q. Are you not now Acting Governor?

A. That is correct.

Q. In your capacity as Secretary of Alaska, are you custodian of the official bills passed by the Territorial Legislature? A. That is correct.

Q. Do you have in your possession what is known as Senate Bill 105, purportedly passed in the last session of the Legislature? [124]

A. Yes, I have a certified copy of it, Mr. McCutcheon.

Q. Is this a copy certified to by you?

A. That is correct.

Q. Does counsel have any objection? (Handing document to Mr. Faulkner.)

Mr. McCutcheon: We offer the certified copy in evidence.

Mr. Faulkner: Yes—we have no objection to this, your Honor. We haven't compared it, but I am sure that Mr. Williams has it correct. We have a certified copy also here.

Court: It may be admitted without objection and marked Plaintiff's Exhibit No. 1.

(Plaintiff's Exhibit No. 1 admitted in evidence.)

[Clerk's Note: This exhibit has already been reproduced as part of Exhibit "C", page 92 and for economy is not here reproduced.]

Mr. McCutcheon: Your witness.

Mr. Faulkner: We have no questions.

Court: That is all, Mr. Williams Is there any other testimony to be offered?

Mr. McCutcheon: That is all.

Court: Have the defendants any oral testimony to propose?

Mr. Faulkner: No sir.

Mr. Medley: No, your Honor.

Court: Very well. Counsel for plaintiff may proceed to argument.

Mr. Faulkner: Wait just a moment. Pardon me, your Honor, there is one document here we would

like to file. Your Honor, there is here a certified copy from Mr. Williams of the Governor's [125] message to the Legislature in which he says the bill is permitted to become law without his signature. Now, that is in the Journal, but I brought this certified copy of it. Have you any objection to it?

Mr. McCutcheon: No objection.

Mr. Faulkner: It may simplify matters rather than have you pick it up in the Journal.

Court: Is there objection?

Mr. McCutcheon: No objection.

Mr. Faulkner: We offer this as Intervenor's Exhibit.

Court: For all the intervenors, Mr. Faulkner?

Mr. Faulkner: Yes sir, for all. We represent them all—Mr. Medley and I do.

Court: Very well. It may be admitted as Intervenor's Exhibit A.

(Intervenor's Exhibit A admitted in evidence.)

[Clerk's Note: This exhibit has already been reproduced as Exhibit "C" on page 86 and for economy is not here reproduced.]

Argument was then had to the Court by Mr. Buell A. Nesbett for and in behalf of the Plaintiff.

Argument was had to the Court by Mr. Stanley J. McCutcheon for and in behalf of the plaintiff.

Argument was had to the Court by Mr. H. L. Faulkner for and in behalf of the intervenors.

Argument was had to the Court by Mr. Edward Medley for and in behalf of the intervenors. [126]

Argument to the Court was had by Mr. J. Gerald Williams for and in behalf of the defendants, as associate counsel and appearing for Honorable Ralph Rivers, Attorney General of Alaska.

Closing argument was then had to the Court for and in behalf of the plaintiff by Mr. Nesbett and Mr. McCutcheon.

Court: Decision will necessarily be reserved, but I suspect that whatever the decision is the case will be brought before an appellate court for review and, therefore, it is desirable to have the record in the best possible order.

Now I understand from the stipulation of counsel that the House and Senate Journals are to be considered by the Court as admitted in evidence. Am I right in that, or are they just to be considered without being in evidence?

Mr. Faulkner: No, I think our stipulation was they may be admitted in evidence, your Honor. We did that to avoid getting certified copies.

Court: Well then, I presume these copies of the House and Senate Journals will be marked as part of the court record.

Mr. Faulkner: Yes, I think so.

Court: And the Robert's Rules of Order, since they are referred to in the House Rules?

Mr. Faulkner: Yes, sir.

Court: Then I presume there would be no objection to having in evidence this copy of Robert's Rules of Order also? [127]

Mr. McCutcheon: No.

Court: It appears to be a printed volume of

the Rules and it is a well known publication. All three of these books, then, may be marked as admitted in evidence as exhibits in the case and they can be numbered Exhibits 101, 102, 103—as the Court's exhibits.

(Court's Exhibits 101, 102, and 103 admitted in evidence.)

There was some further discussion regarding the filing of briefs, and the hearing was closed.

United States of America,
Territory of Alaska—ss:

I, Ruth Haley, Official Court Reporter of the above entitled court, hereby certify:

That the foregoing is a true and correct transcript of the proceedings indicated in the above entitled matter taken by me in shorthand in open court at Anchorage, Alaska, on April 20, 1948, and thereafter transcribed by me.

..... [128]

TRANSCRIPT OF PROCEEDINGS

On Thursday, August 5, 1948, the above-entitled matter came on for hearing on motion for new trial before the Honorable Anthony J. Dimond, United States District Judge.

Mr. Stanley J. McCutcheon of McCutcheon & Nesbett, Anchorage, Alaska, appeared as attorney for the plaintiff.

Honorable Ralph J. Rivers, Attorney General of Alaska, Juneau, Alaska, appeared as attorney for the defendants.

Messrs. Herbert W. Haugland and W. C. Arnold of Seattle, Washington, and J. Gerald Williams of Anchorage, Alaska, appeared as attorneys for the intervenors.

At that time the following proceedings were had:

Court: This is the day set for hearing a motion, or [129] motions, in the case of Griffin against Sheldon, No. A-4597. Counsel may proceed.

Mr. Rivers: May it please the Court, as the Court knows I was in Washington when this matter was heard before. Now that I have come up here personally to represent the Board, I wanted to submit to the Court my view as to the scope of the motion which is now before the Court.

I brought with me a couple of documentary items that I wish to introduce in evidence. As I say, I have not been conversant with the procedural details up until this point. On looking at this motion I find it is a motion for judgment for the defendants, and there is also some language in there that says "or for a new trial." Now, I can assure the Court I am not asking for a new trial on behalf of the defendants, but since there have been no findings and no decree entered in this case, and this is a motion for judgment, I think that perhaps the Court could consider it open for the submission of a little supplementary evidence as well as for hearing some additional argument on the case.

I have talked to counsel, attorney for the plaintiff, and counsel says that he will not object to the Court regarding this matter now as open for the submission of a couple of additional items of evi-

dence. We would like to submit those items before we present the additional arguments, and I ask the Court to regard this proceedings as a proceedings which [130] does re-open the matter for the submission of those extra items of evidence.

Mr. McCutcheon: Well, if the Court please, we resist re-opening the matter, but in the event the Court holds that the case is open to further evidence there are certain items which we would be willing to stipulate go into evidence. But we take the position—we resist re-opening the case for further evidence.

Court: Have you anything further to say, Mr. Rivers?

Mr. Rivers: I understood, of course, that counsel would stipulate that certain things could be admitted, and I guess he is making that now contingent upon the Court's ruling as to whether the Court will allow our offering it or not.

Court: If any further evidence is to be admitted, Mr. Rivers, one would think it would be necessary, either by Order of the Court or by stipulation—by Order of the Court finally, in any event—to open the case for the admission of evidence on both sides, and in that event it may be that the plaintiff would wish further time to consider the matter. If the case is to be opened, I think in fairness the order must be that it is open for all purposes and plaintiff and defendants and intervenors can introduce further evidence.

Mr. Rivers: By all means; I so intended.

Court: Since there is no jury involved, my dis-

position is to so re-open it, because it is certainly useful to have before the Court every bit of relevant evidence that may [131] possibly enter into the decision of the case.

The order will be to permit the introduction of evidence, but it can not be concluded at this minute because the plaintiff may have some desire to submit additional evidence too. I know that three of counsel have come a considerable distance for this hearing, and if it is desired to expedite the matter counsel may proceed now with the understanding that the plaintiff may present further evidence at some future time.

Mr. Rivers: Mr. McCutcheon, would you stipulate that we proceed at this time under that ruling?

Mr. McCutcheon: Yes, I will so stipulate.

Court: Well, the order will be that the case is re-opened for the admission of evidence, and if either defendant or plaintiff is not able to present it all today the hearing will be continued until a later time. Any evidence that is now ready may be offered and then counsel may proceed with argument upon their motion or motions and the matter will then be continued until a later date if that is desired.

Mr. Rivers: May it please the Court, I refer to a document which is a photostatic copy of a letter addressed by the Honorable Ernest Gruening, Governor of Alaska, to the President of the Senate, Eighteenth Territorial Legislature, Juneau, Alaska, under date of March 27, 1947. I also refer to a certification by Frank A. Boyle, Territorial Audi-

tor, attached [132] to said photostat, that the photostat is a true and correct reproduction of the original letter referred to; and I offer that as Defendant's Exhibit A.

Court: Is there objection? Let Mr. McCutcheon see it.

Mr. Rivers: I thought I had shown it—pardon me. (Handed document to Mr. McCutcheon.)

Court: Is this the same letter which appears in the Journal?

Mr. Rivers: It is, if the Court please. I might also say that the plaintiff introduced a carbon copy of that letter at the original hearing which was certified to be a true copy of a carbon copy. The defendants now wish to introduce a true copy of the original letter.

Mr. McCutcheon: No objection.

Court: It may be admitted in evidence and marked as Defendant's Exhibit A.

(Defendant's Exhibit A admitted in evidence.)

[Clerk's Note: This exhibit has already been reproduced as Exhibit "A" on page 79 and for economy is not here reproduced.]

Mr. Rivers: With reference to the letter now marked Defendant's Exhibit A, I have a telegram from Lew M. Williams, Secretary of Alaska, containing certain representations regarding that letter and how it was filed, and counsel has said that he would stipulate that if Mr. Williams were here to further testify in this case that Mr. Williams would testify according to the contents of this tele-

gram which I would like [133] to read into the record. Do you so stipulate?

Mr. McCutcheon: I so stipulate.

Court: Very well. It may be read.

Mr. Rivers: This is a telegram dated August 3 at Juneau, addressed to Attorney General Ralph J. Rivers, c/o Gerald Williams, Attorney, Anchorage, Alaska:

> "Regarding letter dated March 27 1947 addressed to President of the Senate Eighteenth Territorial Legislature Juneau Alaska from Ernest Gruening Governor of Alaska I hereby certify that a carbon copy of said letter accompanied Senate Bill 105 when said bill was received in the office of the Secretary of Alaska for permanent filing from the office of the Governor and that said carbon copy of letter was the only letter of transmittal of said Senate Bill 105 for permanent filing. Stop Said transmittal letter was attached to said bill and filed as part of the record of permanent filing of said bill in the Secretary of Alaska's office that said office is the repository for permanent filing of enacted bills and that undersigned is the duly authorized Secretary of Alaska in charge of said records."

It is from Lew M. Williams, Secretary of Alaska.

Now, may it please the Court, there is one other item—I have here an affidavit subscribed and sworn to on the 8th day of July, 1948, by Ernest Gruening. It is a duplicate original, or identical with, the affidavit attached to the motion for this re-hear-

ing. It contains averments by the Governor that he did execute the letter of March 27, 1947, previously referred to as Defendant's Exhibit A, and I ask that we be allowed to have this affidavit admitted in evidence. (Handed document to Mr. McCutcheon.) [134]

Mr. McCutcheon: No objection.

Court: Without objection it may be admitted and marked Defendant's Exhibit B.

(Defendant's Exhibit B admitted in evidence.)

[Clerk's Note: This exhibit has already been reproduced on page 84 of this printed Record.]

Mr. Rivers: I might add that we are ready to argue. Mr. W. C. Arnold is going to submit additional arguments on the law and pertinent cases but, of course, we would like to have counsel for the plaintiff to avail himself of the opportunity of offering any additional evidence before we offer our arguments.

Court: Does counsel for the plaintiff wish to offer any additional evidence at this time?

Mr. McCutcheon: I think not at this time, your Honor. However, Governor Gruening will be in town tomorrow and it might be that I would like to take advantage of the opportunity of putting him on the stand.

Court: Counsel may reserve the right to introduce evidence later. I am not able to fix the time now because the Court will recess in a few days until some time in September, probably; but counsel will be given an ample opportunity to present any additional evidence he may have and, of course, it will be presented after notice to counsel for the

defendants and counsel for the intervenors. And the order made is an order not for a new trial, but to re-eopen the case and permit the presentation of additional evidence on the part of all parties.

Counsel may now proceed with argument on the motions.

United States of America,
Territory of Alaska—ss:

I, Ruth Haley, Official Court Reporter of the above entitled court, hereby certify:

That the foregoing is a true and correct transcript of the proceedings indicated in the above entitled matter taken by me in shortland in open court at Anchorage, Alaska, on August 5, 1948, and thereafter transcribed by me.

RUTH HALEY. [136]

TRANSCRIPT OF ORAL OPINION

On September 10, 1948, in open court at Anchorage, Alaska the following proceedings were had:

Court: In the case of Felton Griffin, Plaintiff, v. R. E. Sheldon and others, Defendants, an opinion was given some time ago and thereafter a motion was filed for judgment in favor of the defendants notwithstanding the opinion, or, in the alternative, for a new trial. At the request of the Attorney General of Alaska, Mr. Rivers, the case was re-opened and additional testimony was taken on behalf of the defendants, and I presume also on behalf of the intervenors, although they did not request that such testimony be taken. That testi-

mony has been considered, as well as the extended oral arguments of counsel and [137] the written briefs that have been filed and submitted.

The oral testimony which was offered on behalf of the defendants was designed to show, and did show, that the Governor of Alaska intended the measure to become a law without his signature and he sent the bill, which was signed by both the Speaker of the House and the President of the Senate, to the Office of the Secretary with a carbon copy of a letter addressed by him, as I recall, to the President of the Senate, and the letter, carbon copy of which was so sent to the Office of the Secretary of Alaska, contained a declaration to the effect that the Governor wished, or intended, or designed the Act to become a law without his signature.

However, there was nothing signed by the Governor in the Office of the Secretary to show his intent in the matter. When the case was first tried the only testimony offered on this particular point directly was what purported to be a carbon copy of a letter from the Governor. Now, the original letter, or a photostat copy of it, has been supplied, but that photostat copy comes from the Office of the Auditor who has custody of it.

In order to get this testimony before the Court to show the intentions of the Governor by anything over his signature—anything of which the Court could take judicial notice—it was necessary to take evidence outside of anything that appears with the enrolled bill in the Office of the Secretary of

Alaska. And so the question arises, if any evidence must be taken, is [138] it not proper also to refer to the Journals of the Legislature? I found in deciding the case originally that by reference to the Journals it appeared the Bill had not been read three times and, therefore, was invalid under the Act of Congress creating the Alaska Territorial Legislature and giving it certain powers and providing for its procedure. I still hold to the view that if it is necessary to go beyond the matter that appears upon the face of the record in the Office of the Secretary, then it is the duty of the Court to take into consideration any relevant extrinsic evidence and particularly the Journals of the House and Senate. We all know that in the majority of the states, by Constitution or by Law, reference to the Journals of House and Senate are not only permitted but required when the validity of an Act of the Legislature comes into question.

Moreover, all of the parties hereto, by their attorneys, signed a written stipulation, filed herein on April 5, 1948, that either party might introduce in evidence the relevant Legislative Journals, "for the convenience of the Court in referring to the pertinent parts of the Journals involved in the above-entitled cause". So the Journals were introduced in evidence not only without objection but under stipulation, and such introduction was proper and necessary to determine whether the bill had been rightly enacted into Law.

In this jurisdiction, in my judgment, we are bound by the [139] decisions of the U. S. Supreme

Court in the case of Field v. Clark, reported in 143 US, Page 649, and the companion case of Lyons v. Woods—perhaps I should not call it a companion case, but it dovetails in with the Field v. Clark case—reported in 153 US at Page 649, holding that where the record in the Office of the Custodian of the Law shows that the questioned Act was passed by the House and Senate and signed by the presiding officers of both bodies and approved by the President or Governor, no collateral attack upon it is permissible. The declaration was first made in Field v. Clark and then the same doctrine was applied to one of the Territories in the case of Lyons v. Woods.

And so in this case had the bill been signed by the Governor the Court would have been obliged to declare it valid even if it had not been read at all in either house because upon its face it would appear to be valid, but if reference must be made to anything beyond the official record of the enrolled bill in the Office of the Secretary, then the Court must also examine the Journals and the Court, I believe, is bound to give effect to what appears in the Journals as to compliance with the Act of Congress concerning the enactment of bills.

Counsel in their learned arguments brought to bear the force of certain decisions or opinions of State Courts cited in the case of Field v. Clark some of which go considerably beyond the scope of the declaration of the Supreme Court given in that [140] case and it is urged upon the Court that since the Supreme Court has cited those opinions then

this Court should go as far as any of the State Courts have gone in upholding such legislation. However, it seems pretty clear that appellate courts in citing opinions or decisions of other courts do not thereby give their approval to everything that is contained in those opinions or decisions. My own experience teaches me that no such rule can be followed because frequently an appellate court, and particularly the Supreme Court, will cite an opinion of the lower courts on the general principle, without I am sure, intending to approve everything that was said by the lower court upon the point.

And so we come back to the precise position we were in when the original opinion was written. This bill was passed by both House and Senate—if we can consider it having been passed in the manner in which it was passed, without three readings in the House—without the third reading in the House. At any rate, it was so far passed that it was signed by the Speaker of the House and the President of the Senate and was sent to the office of the Secretary without any declaration in writing from the Governor, signed by him, to indicate that he intended the Act to become a law without his signature, and upon reference to the House Journal I have found that it was not read three times in the House, having been read the third time by number only, which is not in harmony with the Organic Act of Alaska and, therefore, it is invalid.

Now, it is unfortunate that any court any time must declare an Act of the Legislature invalid, but it seems that that has been the duty of courts in certain cases from the beginning of our existence

as a nation, and in cases where the Court is obliged to consider the Journals, if one reading of a bill can be dispensed with then there is no real reason why three readings can not be dispensed with and, finally, the Act of Congress requiring certain procedure for the enactment of bills would be entirely a nullity.

The motion for new trial, or motion for judgment for the defendants in the alternative, are both denied, and Findings of Fact, Conclusions of Law and Decree may be prepared and served and presented to the Court. [141]

I, Ruth Haley, of Anchorage, Alaska, hereby certify:

That I am the official court reporter in the District Court for the Territory of Alaska, Third Division; that I attended the trial of the cause entitled "Felton H. Griffin, plaintiff, vs. R. E. Sheldon et al., defendants and United States Smelting, Refining and Mining Company, a corporation, et al., intervenors, cause No. A-4597", at Anchorage, Alaska, on April 20, 1948 and on August 5, 1948, and on September 10, 1948 and took down in shorthand the testimony given and proceedings had at each of said hearings; that I thereafter transcribed said shorthand, and the foregoing pages numbered 1 to ..., inclusive, comprise a full, true, and correct statement and transcript of such testimony and proceedings.

Dated at Anchorage, Alaska, this 7th day of October, 1948.

/s/ RUTH HALEY,
Court Reporter. [142]

Thereafter on the 7th day of October, 1948, the court made and ordered entered its "Findings of Fact and Conclusions of Law" and on the same day the court signed and ordered entered its decree granting a permanent injunction.

The above and foregoing is all of the evidence introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, R. E. Sheldon, Ernest F. Jessen, Anthony Zorich and George Vaara, the defendants and appellants, and the United States Smelting, Refining and Mining Company, a corporation, and each of the additional intervenors as appellants, tender and present the foregoing as their Bill of Exceptions in said cause and pray that the same may be settled, allowed and signed and sealed and made a part of the record in said cause by this court pursuant to the law in such cases.

RALPH RIVERS,
J. GERALD WILLIAMS,

By H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY AND HAUGLAND,
J. GERALD WILLIAMS,

By H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed Oct. 8, 1948. [159]

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF SERVICE

Service by receipt of a certified copy of the proposed Bill of Exceptions in the above-entitled matter is hereby acknowledged.

Dated this 8th day of October, 1948.

McCUTCHEON & NESBETT,

By S. McCUTCHEON,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Oct. 8, 1948. [161]

[Title of District Court and Cause.]

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS

Be it remembered that upon this 8th day of October, 1948, the matter of settling the Bill of Exceptions in the above entitled cause came on regularly for hearing, and the Judge of the above-mentioned court being duly advised in the premises, it is hereby Ordered, Adjudged and Certified as to said Bill of Exceptions consisting of ... pages plus exhibits and identifications, as follows, to-wit:

a. That the same has been filed, allowed and certified within the time required by law and the Rules of this Court;

b. That the same contains the complete Transcript of Testimony and evidence before the Court

on the trial of said cause; that it sets forth the rulings of the Court upon all motions for introduction of evidence; all of the oral and documentary evidence [162] given upon the trial of said cause which is necessary to clearly present the questions of law involved in the rulings to which errors are assigned in the Assignments of Error heretofore filed in this cause (save and except plaintiff's exhibits 1, 101, 102, and 103) hereinafter mentioned.

c. That the same is hereby settled, allowed and signed as the true and correct Bill of Exceptions of all matters and things therein contained;

d. That said Bill of Exceptions is hereby made a part of the record of this cause;

e. That this order constitutes the Judge's certificate to said Bill of Exceptions and that the same be placed by the Clerk of this Court at the end of said Bill of Exceptions and attached to the same as a part thereof;

f. That Plaintiff's Exhibits "1", "101", "102", and "103" together with all the other exhibits entered in this case be and they are hereby directed to be forwarded by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, as a part of the Bill of Exceptions in this cause for the examination and inspection of said Circuit Court of Appeals, it appearing to this Court that it is proper and advantageous in this appeal that said original exhibits be placed before said last named Court for its examination and inspection. Said exhibits so enumerated and to be

transferred, are hereby made a part of the Bill of Exceptions herein.

Done in Open Court this 8th day of October, 1948, at Anchorage, Alaska.

ANTHONY J. DIMOND,
District Judge.

Approved and Presentation hereby waived. S. McCutcheon, Oct. 8, 1948, Attny. for Plaintiff.

Presented by H. W. Haugland of Counsel for Defts. and Intervenors.

Entered Court Journal No. G 17, Page No. 235, Oct. 8, 1948.

[Endorsed]: Filed Oct. 8, 1948. [163]

[Title of District Court and Cause.]

STIPULATION RE PRINTING OF RECORD

It is hereby stipulated by and between the above named parties, plaintiff, defendants and intervenors, through their respective attorneys, that in printing the papers and records to be used on the hearing on appeal in the above-entitled cause for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit the title of the Court and cause in full on all papers shall be omitted except on the first page of said record and that there shall be inserted in place of said title in all papers used as a part of said record the words "Title of Court and Cause." Also that all endorsements on all papers used as part of said record

shall be omitted except the Clerk's filing marks and the admission of service. [164]

Dated at Anchorage, Alaska, this 8th day of October, 1948.

McCUTCHEON & NESBETT,
By S. McCUTCHEON,
Attorneys for Plaintiff.

RALPH RIVERS,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY AND HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed Oct. 8, 1948. [165]

[Title of District Court and Cause.]

PRAECIPE DESIGNATING CONTENTS OF THE RECORD ON APPEAL

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to an appeal allowed in the

above-entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Complaint.
2. Amended Complaint.
3. Complaint in Intervention.
4. Answer to Complaint in Intervention.
5. Order Allowing Intervention.
6. Answer to Amended Complaint. [166]
7. Answer of Intervenors to Amended Complaint.
8. Reply.

8a. Stipulation filed April 5, 1948, relative to Introduction of Certain Evidence.

9. Minutes of proceedings April 20, 1948.
10. Memorandum Opinion.
11. Defendants and Intervenors Motion for Judgment or for New Trial together with Affidavit of J. Gerald Williams and the Exhibits attached to said Affidavit.
12. Minutes of Proceedings August 5, 1948.
13. Minutes of Proceedings September 10, 1948.
14. Findings of Fact and Conclusions of Law.
15. Decree (Please show the date said decree was entered on your civil docket).
16. Order Denying Motion for Judgment or for New Trial.
17. Petition for Allowance of Appeal.
18. Assignment of Errors.
19. Order Allowing Appeal.
20. Citation on Appeal.
21. Acknowledgment of Service of Citation.

22. Bill of Exceptions (Together with all exhibits filed in this case unless the same are incorporated in the Bill of Exceptions).

23. Acknowledgment of Service of Proposed Bill of Exceptions.

24. Order Certifying and Settling Bill of Exceptions.

25. Stipulation re Printing of Record.

26. This Praecipe Designating Contents of Record on Appeal.

27. Acknowledgment of Service of Appellants Praecipe Designating Contents of Record on Appeal.

Dated this 8th day of October, 1948.

RALPH RIVERS,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Defendants. [167]

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY AND HAUGLAND,
J. GERALD WILLIAMS,
By H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed Oct. 8, 1948. [168]

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF SERVICE

Service by receipt of a certified copy of the proposed Praecipe Designating Contents of The Record on Appeal in the above entitled matter is hereby acknowledged.

Dated this 8th day of October 1948.

McCUTCHEON & NESBETT,
By S. McCUTCHEON,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Oct. 8, 1948. [169]

[Title of District Court and Cause.]

AMENDED PRAECIPE DESIGNATING CONTENTS OF THE RECORD ON APPEAL

To the Clerk:

You are instructed to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to an appeal allowed in the above-entitled cause and to include in such transcript of record the following and no other papers or exhibits, to wit:

1. Complaint.
2. Amended Complaint.
2a. Motion for Leave to Intervene.
3. Complaint in Intervention.
4. Answer to Complaint in Intervention.
5. Order Allowing Intervention.
6. Answer to Amended Complaint.

7. Answer of Intervenors to Plaintiff's Amended Complaint.

7a. Reply to Intervenor's Answer.

8. Reply.

8a. Stipulation for Introduction of Evidence.

9. Minutes of Proceedings April 20, 1948. [170]

10. Opinion.

11. Defendants and Intervenors Motion for Judgment or for New Trial together with the Affidavit of J. Gerald Williams and the Exhibits attached to said Affidavit.

12. Minutes of Proceedings August 5, 1948.

13. Minutes of Proceedings September 10, 1948.

14. Findings of Fact and Conclusions of Law.

15. Decree.

16. Order Denying Motion for Judgment or for New Trial.

17. Petition for Allowance of Appeal.

18. Assignment of Errors.

19. Order Allowing Appeal.

20. Citation on Appeal.

21. Acknowledgment of Service of Citation.

21a. Intervenors Cost Bond.

22. Bill of Exceptions (together with all exhibits filed in this case unless the same are incorporated in the Bill of Exceptions).

23. Acknowledgment of Service of Proposed Bill of Exceptions.

24. Order Certifying and Settling Bill of Exceptions.

25. Stipulation re Printing of Record.

26. Praecipe Designating Contents of Record on Appeal.

27. Acknowledgment of Service of Appellants Praecipe Designating Contents of Record on Appeal.

28. Amended Praecipe Designating Contents of Record on Appeal.

29. Acknowledgment of Service of Appellants Amended Praecipe.

Dated this 9th day of November, 1948.

RALPH RIVERS,
J. GERALD WILLIAMS,
By J. GERALD WILLIAMS,
Attorneys for Defendants. [171]

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY AND HAUGLAND,
J. GERALD WILLIAMS,
By /s/ J. GERALD WILLIAMS,
Attorneys for Intervenors. [172]

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF SERVICE

Service by receipt of a certified copy of the Amended Praecipe Designating Contents of The Record on Appeal in the above entitled matter is hereby acknowledged.

Dated this 9th day of November, 1948.

McCUTCHEON & NESBETT,
By STANLEY McCUTCHEON,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Nov. 9, 1948. [173]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 171 pages, numbered from 1 to 171, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the Praecipe for Transcript of Record filed in my office on the 8th day of October, 1948; the Amended Praecipe filed in my office on the 9th day of November, 1948; that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to $23.00, has been paid to me by J. Gerald Williams, one of the attorneys for the defendants and appellants and as one of the attorneys for the intervenors and appellants herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 12th day of November, 1948.

/s/ M. E. S. BRUNELLE,
Clerk of the District Court, Territory of Alaska,
Third Division.

[Endorsed]: No. 12097. United States Court of Appeals for the Ninth Circuit. R. E. Sheldon, as Executive Director, Unemployment Compensation Commission of Alaska, Ernest F. Jessen, Anthony Zorich and George Vaara as the Unemployment Compensation Commission of Alaska, United States Smelting, Refining and Mining Company, a corporation, Alaska Laundry, Inc., a corporation, Pacific American Fisheries, Inc., a corporation, Healy River Coal Corporation, a corporation, Juneau Spruce Corporation, a corporation, Western Fisheries Company, a corporation, Wells Alaska Motors, a co-partnership, and Joe Coble, doing business as The Pioneer Cab Company and all others similarly situated, Appellants, vs. Felton H. Griffin, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed November 15, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12097

FELTON H. GRIFFIN,

Plaintiff,

vs.

R. E. SHELDON as Executive Director, Unemployment Compensation Commission of Alaska: ERNEST F. JESSEN, ANTHONY ZORICH and GEORGE VAARA as the Unemployment Compensation Commission of Alaska,

Defendants,

UNITED STATES SMELTING, REFINING AND MINING COMPANY, a corporaton; ALASKA LAUNDRY, INC., a corporation; PACIFIC AMERICAN FISHERIES, INC., a corporation; HEALY RIVER COAL CORPORATION, a corporation; JUNEAU SPRUCE CORPORATION, a corporation; WESTERN FISHERIES COMPANY, a corporation; WELLS ALASKA MOTORS, a co-partnership; and JOE COBLE, d/b/a THE PIONEER CAB COMPANY, and all others similarly situated,

Intervenors.

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED

Come now the appellants, the defendants and intervenors in the above entitled case and adopt

the Assignment of Errors as their statement of points to be relied on, and pray that the whole of the record as filed and certified be printed in its entirety.

RALPH RIVERS,
J. GERALD WILLIAMS,

By /s/ H. W. HAUGLAND,
Attorneys for Defendants.

W. C. ARNOLD,
FAULKNER, BANFIELD & BOOCHEVER,
MEDLEY & HAUGLAND,
J. GERALD WILLIAMS,

By /s/ H. W. HAUGLAND,
Attorneys for Intervenors.

[Endorsed]: Filed November 18, 1948. Paul P. O'Brien, Clerk.